

Exhibit A

KENT B. GOSS (State Bar No. 131499)
kgoss@orrick.com
VALERIE M. GOO (State Bar No. 187334)
vgoo@orrick.com
T. WAYNE HARMAN (State Bar No. 254089)
wharman@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
777 S. Figueroa Street, Suite 3200
Los Angeles, CA 90017
Telephone: +1-213-629-2020
Facsimile: +1-213-612-2499

Attorneys for Plaintiff
ALFRED H. SIEGEL, LIQUIDATING TRUSTEE

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA

In re:

LBREP/L-SunCal Master I LLC

Debtor.

ALFRED H. SIEGEL, Liquidating Trustee,
Plaintiff,

v.

LBREP LAKESIDE SC MASTER I, LLC,
a Delaware limited liability company; SCC
RANCH VENTURE, LLC, a Delaware
limited liability company; SC MASTER
HOLDINGS, LLC, a Delaware limited
liability company; SC MASTER PARENT
HOLDINGS, LLC, a Delaware limited
liability company; LAKESIDE CAPITAL
PARTNERS II, LLC, a Delaware limited
liability company; SCC ACQUISITIONS,
INC., a California corporation; SCC
ACQUISITIONS, LLC, a limited liability
company; BRUCE ELIEFF, an individual;
MARK MAGSTADT, an individual;
MELVIN T. ANDREWS, an individual;
RONALD W. LEE, an individual; and
DOES 1 through 10, inclusive;

Defendants.

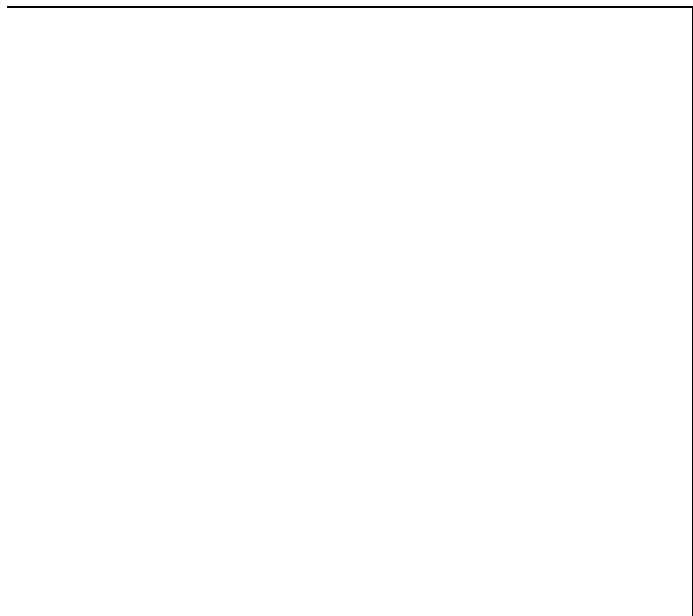
Case No. 8:08-15588-ES

Adv. No. 8:11-01084-ES

AMENDED COMPLAINT:

1. To Recover Intentionally
Fraudulent Conveyance [on
Behalf of the Borrower's
Creditors];
2. To Recover Constructively
Fraudulent Conveyance [on Behalf
of the Borrower's Creditors];
3. To Recover Constructively
Fraudulently Transferred Property
[on Behalf of the Borrower's
Creditors];;
4. To Recover Intentionally
Fraudulent Conveyance [on Behalf
of the Operating Subsidiaries'
Creditors];
5. To Recover Constructively
Fraudulent Conveyance [on Behalf
of the Operating Subsidiaries'
Creditors];
6. To Recover Constructively
Fraudulently Transferred Property
[on Behalf of the Operating

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Subsidiaries' Creditors];
7. For Unlawful Distribution;
8. For Breach of Fiduciary Duty;
9. For Conversion;
10. For Unjust Enrichment;
11. For An Accounting;
12. For Aiding and Abetting; and
13. For Civil Conspiracy; and
DEMAND FOR JURY TRIAL

1 Alfred H. Siegel, solely in his capacity as the duly appointed, qualified and
2 acting liquidating trustee (the “**Trustee**” or “**Plaintiff**”) complains as follows:

3 **INTRODUCTION**

4 1. This case is brought on behalf of four estates in bankruptcy- the parent
5 holding company and three operating subsidiaries- against their collective parent
6 entities and individuals who, through the use of a joint venture, formed, operated,
7 and controlled the four entities. These entities were formed by Defendants to
8 acquire, develop, and sell commercial real estate. However, instead of operating
9 these companies in good faith as viable, ongoing concerns, Defendants merely used
10 them as vehicles to realize unearned, above-market profits in only two years.
11 Defendants divested the estates of their equity, saddled them with hundreds of
12 millions of dollars of debt, and left them insolvent and unable to pay their debts as
13 they became due.

14 2. The Trustee now seeks to recover approximately \$144 million that
15 Defendants caused to be improperly and illegally transferred from Debtors to
16 themselves, as full repayment of their equity investments and over \$40 million in
17 “profits.” This distribution left the four estates insolvent and caused their
18 bankruptcies.

19 **PARTIES TO THE ACTION**

20 3. Plaintiff, Alfred H. Siegel, whose business address is 15233 Ventura
21 Boulevard Floor 9, Sherman Oaks, CA 91403-2250, brings this action, in his
22 representative capacity only, on behalf of the following Estates:

23 a. LBREP/L SunCal Master I, LLC, currently the debtor in the
24 chapter 11 case styled In Re LBREP/L SunCal Master I, LLC, Case No. 8:08-BK-
25 15588-ES pending in the United States Bankruptcy Court for the Central District of
26 California (hereinafter “**Lehman/SunCal Master**” or “**Borrower**”);

27 b. LBREP/L SunCal McAllister Ranch, LLC, currently the debtor
28 in the chapter 11 case styled: “In Re LBREP/L SunCal McAllister Ranch, LLC”;

1 Case No. 8:08-BK-15637-ES, pending in the United States Bankruptcy Court for
2 the Central District of California (hereinafter “**McAllister**”);

3 c. LBREP/L SunCal McSweeny Farms, LLC, currently the debtor
4 in the chapter 11 case styled: “In Re LBREP/L SunCal McSweeny Farms, LLC”;
5 Case No. 8:08-BK-15639-ES pending in the United States Bankruptcy Court for the
6 Central District of California (hereinafter “**McSweeny**”); and

7 d. LBREP/L SunCal Summerwind Ranch, LLC, currently the
8 debtor in the chapter 11 case styled: “In Re LBREP/L SunCal Summerwind Ranch,
9 LLC”; Case No. 8:08-BK-15640-ES, pending in the United States Bankruptcy
10 Court for the Central District of California (hereinafter “**Summerwind**”).

11 McAllister, McSweeny, and Summerwind are collectively referred to herein
12 as the “**Operating Subsidiaries**” and, together with Lehman/Suncal Master, as the
13 “**Debtors**”.

14 4. The Trustee is informed and believes, and on that basis alleges, that
15 defendant LBREP Lakeside SC Master I, LLC (“**LBREP-Lakeside**”) is a Delaware
16 limited liability company doing business within this judicial district and with its
17 principal place of business at 3500 West Olive Avenue, Suite 650, Burbank,
18 California 91505.

19 5. The Trustee is informed and believes, and on that basis alleges, that
20 defendant SC Master Holdings, LLC (“**SC Master**”) is a Delaware limited liability
21 company doing business within this judicial district with its principal place of
22 business at 3500 West Olive Avenue, Suite 650, Burbank, California 91505.

23 6. The Trustee is informed and believes, and on that basis alleges, that
24 defendant SC Master Parent Holdings, LLC (“**SC Master Parent**”) is a Delaware
25 limited liability company doing business within this judicial district with its
26 principal place of business at 3500 West Olive Avenue, Suite 650, Burbank,
27 California 91505. LBREP-Lakeside, SC Master and SC Master Parent shall be
28 referred to collectively herein as the “**LBREP Defendants**.”

7. The Trustee is informed and believes, and on that basis alleges, that defendant Lakeside Capital Partners II, LLC (“**Lakeside Capital**”) is a Delaware limited liability company doing business within this judicial district with its principal place of business at 3500 West Olive Avenue, Suite 650, Burbank, California 91505.

8. The Trustee is informed and believes, and on that basis alleges, that defendant SCC Ranch Ventures, LLC (“**SCC Ranch**”) is a Delaware limited liability company doing business within this judicial district and with a principal place of business located at 2392 Morse Avenue, Irvine, CA 92614. Upon information and belief, SCC Ranch is an affiliate of SCC Acquisitions, Inc. and SCC Acquisitions, LLC.

9. The Trustee is informed and believes, and on that basis alleges, that defendant **SCC Acquisitions, Inc.** is a California corporation doing business within this judicial district and with a principal place of business located at 2392 Morse Avenue, Irvine, CA 92614. Upon information and belief, SCC Acquisitions, Inc. is the main operating and investing entity for the SunCal Companies.

10. The Trustee is informed and believes, and on that basis alleges, that defendant **SCC Acquisitions, LLC** is a limited liability company doing business within this judicial district and with a principal place of business located at 2392 Morse Avenue, Irvine, CA 92614.

11. Upon information and belief, SCC Ranch, SCC Acquisitions, Inc. and SCC Acquisitions, LLC are affiliate companies owned and controlled by common employees, officers, directors and members, including Bruce Elieff.

12. Specifically, upon information and belief, Defendants SCC Acquisitions, Inc., SCC Acquisitions, LLC, and SCC Ranch all do business under the name SunCal Companies (“**SunCal**”).

13. The Trustee is informed and believes, and on that basis alleges, that defendant **Bruce Elieff** is a California resident residing in Newport Coast,

1 California. Upon information and belief, Bruce Elieff was the Manager of
2 defendant SCC Ranch, which in turn was the Operating Manager of
3 Lehman/SunCal Master. Upon information and belief, Bruce Elieff co-managed
4 controlled the operations of Lehman/SunCal Master.

5 14. The Trustee is informed and believes, and on that basis alleges, that
6 defendant Mark Magstadt (“**Magstadt**”) is a California resident residing in Santa
7 Ana, California.

8 15. SCC Ranch, SCC Acquisitions, Inc., and SCC Acquisitions, LLC shall be
9 referred to collectively herein as the “**SunCal Corporate Defendants.**” The
10 SunCal Corporate Defendants, together with Magstadt and Bruce Elieff, shall be
11 referred to collectively herein as the “**SunCal Defendants.**”

12 16. The Trustee is informed and believes, and on that basis alleges, that
13 defendant Melvin T. Andrews (“**Andrews**”) is a California resident residing in Los
14 Angeles, California.

15 17. The Trustee is informed and believes, and on that basis alleges, that
16 defendant Ronald W. Lee (“**Lee**”) is a California resident residing in Pasadena,
17 California. Lee, together with Andrews and Lakeside Capital, shall be referred to
18 collectively herein as the “**Lakeside Defendants.**”

19 18. The Trustee is unaware of the true names of Does 1 through 10 and therefore
20 sues them by such fictitious names, and he will ask for leave of court to insert their
21 true names when such have been ascertained. The Trustee is informed and believes
22 that each of the Doe Defendants was and is the partner, agent, servant, employee,
23 officer, director, representative, co-conspirator and/or alter ego of each of the
24 remaining Defendants, and that each was acting within the scope of his or her
25 authority as such partner, agent, servant, employee, representative, co-conspirator
26 and/or alter ego with the actual or ostensible permission and consent of the
27 remaining Defendants or that such Defendants are the immediate or mediate
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1 transferees of the fraudulent transfer complained of herein or that such Defendants
2 breached fiduciary duties owed to the Debtors or the creditors of the Debtors.

3 **STATEMENT OF JURISDICTION AND VENUE**

4 19. The District Court has jurisdiction over this action pursuant to 28 U.S.C. §
5 1331, 1334 and 1367 because, *inter alia*, this is a civil proceeding arising under and
6 relating to cases under title 11 of the United States Code.

7 20. Venue properly lies in this judicial district in that this civil proceeding arises
8 under title 11 of the United States Code and relates to cases under title 11 currently
9 pending in this judicial district as provided for in 28 U.S.C. § 1409(a).

10 21. Pursuant to a January 5, 2011 Order of the U.S. District Court for the Central
11 District of California, this action was referred to the Bankruptcy Court for all pre-
12 trial proceedings.

13 **STATEMENT OF STANDING**

14 22. The Plaintiff, as the Trustee, has standing to bring this action pursuant to 11
15 U.S.C. §§ 323, 1107, 1108, 544, 550, and 551.

16 23. This case arises out of and is related to the chapter 11 case of
17 Lehman/SunCal Master, and the administratively consolidated chapter 11 cases of
18 McAllister Ranch LLC, McSweeney Farms LLC and Summerwind Ranch LLC,
19 originally commenced as involuntary cases filed on September 10 and 11, 2008 (the
20 “**Petition Dates**”), with orders for relief entered on October 30, 2008, and currently
21 pending in the United States Bankruptcy Court for the Central District of
22 California, Santa Ana Division.

23 24. Under Bankruptcy Code §546, the Trustee may file any actions under
24 Bankruptcy Code §544 within two years of the entry of an order for relief. Under
25 Bankruptcy Code §108 (a), the Trustee may file actions asserting non-bankruptcy
26 claims within two years of the entry of an order for relief. The orders for relief in
27 the cases of the Debtors were entered on October 30, 2008.
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STATEMENT OF THE CASE

25. Defendants LBREP-Lakeside and SCC Ranch are the equity owners of Lehman/SunCal Master. In or about January 2006, Lehman/Suncal Master transferred to Defendants \$144 million of monies borrowed ostensibly to develop the real estate projects owned by its Operating Subsidiaries.

26. Debtors, Lehman/Suncal Master and the Operating Subsidiaries, received little or no consideration for this transfer of funds and the transfer left the Debtors insolvent and without sufficient assets or operating capital to conduct their business. As a result, the Debtors were forced into bankruptcy. Trustee now seeks the return of the \$144 million and damages for Defendants' breach of fiduciary duties in authorizing the transfer of the \$144 million and the loan transaction that facilitated that transfer.

STATEMENT OF OPERATIVE FACTS

A. The Real Estate Projects and Borrower Lehman/SunCal Master's Corporate Structure

27. Debtor Lehman/SunCal Master was a real estate holding company established by Defendants, and its primary asset was its interest in the Operating Subsidiaries, as the sole equity member of Debtors McAllister, McSweeney, and Summerwind. Lehman/SunCal Master also was the sole equity member of a fourth entity, a non-debtor, LBREP/L SunCal Patterson Ranch, LLC ("**Patterson Ranch**").

28. Each of these entities owned real property developments in Southern California bearing their respective names (collectively, the "**Real Properties**," or the "**Real Estate Projects**"). Each Operating Subsidiary has its own set of creditors and assets.

The Joint Venture

29. In 2004, the Defendants (comprised of three groups of defendants- the SunCal Defendants, the LBREP Defendants, and the Lakeside Defendants), formed a joint venture for the specific, limited purpose of investing in and developing specific parcels of commercial real estate in California.

30. SunCal was, at the time of the transactions identified herein, one of California's largest private developers of master-planned communities.

31. SunCal's business plan involved the acquisition and development of large-scale development sites for sale to homebuilders and commercial developers.

32. Upon information and belief, SunCal professed to be an expert in developing real estate projects like those involving the Real Properties, including conducting market and financial analyses and managing the development of such projects.

33. By the Fall of 2004, SunCal had purchased or contracted to purchase the Real Properties, with the intent to develop them into residential subdivisions, with the lots to be sold to third party residential contractors.

34. In late 2004, the SunCal Defendants, along with the LBREP Defendants and Lakeside Defendants, formed various companies, which Defendants themselves referred to as a "master LLC structure," to own the Real Properties and to manage the Real Estate Projects as part of a joint venture between the LBREP Defendants, the SunCal Corporate Defendants, and Lakeside Capital to develop the Real Estate Projects.

35. Defendants intended to create a joint venture, agreed to create a joint venture, and both treated and described their involvement in the Real Estate Projects as a joint venture, both among themselves and with third parties, and this is how they represented the structure of the Projects to investors.

36. For example, in an early presentation to the LBREP Investment Committee, LBREP states that *its* investment in the Real Estate Projects would be made in

1 partnership with Lakeside Capital Partners (Lakeside) and SunCal Companies, and
2 that the investment would be made *via* the LBREP/SunCal Master.

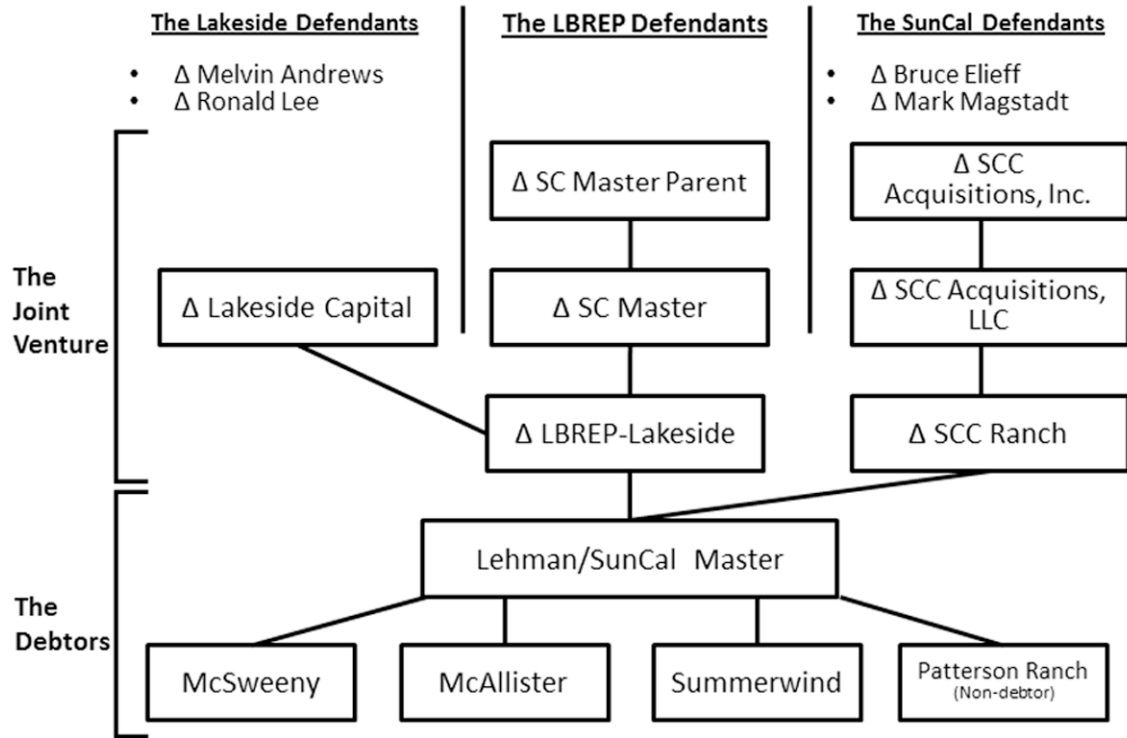
3 37. Further, in or around November 2005, Defendants described the Borrower to
4 potential lenders as the vehicle through which a joint venture between the SunCal
5 Defendants and the LBREP Defendants operated.

6 38. Upon information and belief, and consistent with their prior history of
7 working together on real estate investment projects, the LBREP Defendants were to
8 provide the majority of the financing for the Real Estate Projects, the SunCal
9 Defendants primarily would be the developer and manager of the Real Estate
10 Projects, and the Lakeside Defendants would act as the LBREP Defendants' agent,
11 supervising SunCal and approving SunCal's draw requests for development
12 funding.

13 39. Upon information and belief, Defendants shared the profits and losses of the
14 joint venture and had a right to joint management and control of the joint venture.

15 40. Specifically, in October and November 2004, the following companies were
16 formed: Lehman/SunCal Master; three of the Operating Subsidiaries: McAllister,
17 McSweeny, and Patterson Ranch (Summerwind was formed in or around April
18 2005); and Defendants SCC Ranch, LBREP-Lakeside, and SC Master (SC Master
19 Parent was formed in or around August 2005).

20 41. The organizational structure of Defendants' joint venture, as well as the
21 Debtors, can be seen in the following chart on the next page:
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42. Debtor Lehman/SunCal Master was the holding company that was established to fund the real estate development projects owned by each of the three Operating Subsidiaries (McAllister, McSweeney, Summerwind), as well as Patterson Ranch.

43. Lehman/SunCal Master was directly owned and controlled by its two members, Defendants LBREP-Lakeside and SCC Ranch.

44. At all relevant times herein, Defendant LBREP-Lakeside was the Managing Member of Lehman/SunCal Master, and had sole and exclusive management

control over Lehman/SunCal Master and the duty to supervise the Operating Member, Defendant SCC Ranch.

45. Upon information and belief, LBREP-Lakeside has two members: Defendant SC Master and Defendant Lakeside Capital.

The LBREP Defendants

46. The LBREP Defendants are the affiliated entities that were controlled and operated by common individuals who were also employees of Lehman Brothers Real Estate Partners, L.P. ("LBREP"), which managed and operated several equity funds that invested in real estate transactions. The LBREP Defendants include LBREP-Lakeside, SC Master and SC Master Parent.

47. Upon information and belief, Defendant SC Master is and has been the Managing Member of Defendant LBREP-Lakeside and, at all relevant times herein, controlled and directed the conduct of Defendant LBREP-Lakeside.

48. Upon information and belief, Defendant SC Master Parent is and has been the Managing Member of Defendant SC Master and, at all relevant times herein, controlled and directed the conduct of SC Master and LBREP-Lakeside.

49. Upon information and belief, the LBREP Defendants employed common employees and were operated and controlled by common individuals, and collectively controlled the actions and operations of Debtors.

The SunCal Defendants

50. The SunCal Defendants affiliated entities were controlled and operated by common employees and principals, including Defendants Magstadt and Elieff. The SunCal Defendants include Defendants Magstadt, Bruce Elieff, SCC Ranch, SCC Acquisitions, LLC, and SCC Acquisitions, Inc.

51. At all relevant times herein, Defendant SCC Ranch has been the Operating Member of Lehman/SunCal Master and has been primarily responsible for the day-to-day business and affairs of Lehman/SunCal Master, and for carrying out the

1 development of the Real Properties. Defendant SCC Ranch was to faithfully,
2 competently and prudently perform its duties and responsibilities.

3 52. Upon information and belief, the sole member of SCC Ranch was SCC
4 Acquisitions, LLC, which was owned and controlled by SCC Acquisitions, Inc.

5 53. Upon information and belief, SCC Ranch, SCC Acquisitions, LLC, and SCC
6 Acquisitions, Inc., employed common employees and were operated and controlled
7 by common individuals, and collectively controlled the actions and operations of
8 Debtors.

9 54. Upon information and belief, Defendant Bruce Elieff was a Manager and
10 Designated Representative of Defendant SCC Ranch, the President and owner of
11 SunCal Companies, and an authorized representative of Lehman/SunCal Master.

12 55. Upon information and belief, Defendant Magstadt was the Chief Operating
13 Officer and Designated Representative of Defendant SCC Ranch and an authorized
14 representative of Lehman/SunCal Master.

15 ***The Lakeside Capital Defendants***

16 56. The Lakeside Capital Defendants include Defendants Lee, Andrews, and
17 Lakeside Capital.

18 57. Defendant Lakeside Capital was a member of and agent for Defendant
19 LBREP-Lakeside. Pursuant to the Operating Agreement of LBREP-Lakeside,
20 Lakeside Capital was responsible for, *inter alia*, supervising SCC Ranch in
21 connection with its administration of the day to day operations of Lehman/SunCal
22 Master and the Operating Subsidiaries.

23 58. In addition, Lakeside Capital also was responsible for “diligently monitoring
24 the performance of each [Operating Subsidiary] in respect of compliance with the
25 terms of any existing financing.”

26 59. Defendant Andrews was an authorized signatory and designated
27 representative of LBREP-Lakeside, and was a member, authorized signatory and
28 designated representative of Lakeside Capital.

60. Upon information and belief, Defendant Lee was an authorized signatory and designated representative of LBREP-Lakeside, and was a member, authorized signatory and designated representative of Lakeside Capital.

B. The History of the January 2006 Loans

61. As part of the acquisition of the Real Estate Projects, each member of the joint venture was required to make minimal capital contributions to the Projects.

62. Upon information and belief, almost immediately after making their initial capital contributions to the Real Estate Projects, Defendants began discussing a plan to obtain a large loan that would enable Defendants to pull all of their equity investment out of the deal. Through the Spring and Summer of 2005, the LBREP Defendants had discussions with lenders regarding a large senior loan for the Real Estate Projects.

63. Defendants initially contemplated a \$300 million loan to be taken by Debtors, with the proceeds to be distributed as follows: (i) approximately \$60 million to repay existing indebtedness to another Lehman entity, Lehman Ali; (ii) approximately \$75-100 million to Defendants; and (iii) approximately \$120 million to fund the ongoing development needs of the Real Estate Projects (i.e., to pay debts as they become due) (the "Development Fund").

64. However, anxious to eliminate any risk for themselves associated with the Real Estate Projects, Defendants devised a plan to grant themselves a much larger dividend, which would not only return their equity contributions, but also, would provide them with unearned profits. They did this by slashing the portion of the loan proceeds that were to go into the Development Fund, at the direct expense of the Borrower, the Operating Subsidiaries, and their creditors.

65. In other words, Defendants took money needed to pay Debtors' debts as they became due and instead paid it to themselves as a "dividend."

66. By early October 2005, Defendants *decreased* the proposed size of the Development Fund to \$100 million, and *doubled* the size of the equity dividend to \$150 million.

67. In addition to seeking a full return of their equity investment, Defendants also sought to receive above-market profits, years before the majority of the lots would be sold.

68. By late October 2005, the LBREP Defendants had decided to restructure the loan as two term loans and a revolving loan (revolver). This restructuring had the effect of eliminating *in its entirety* the distribution of any proceeds to the Development Fund (which, before the restructuring, had been budgeted to receive approximately \$100 million).

69. In or around October 2005, the LBREP Defendants described the restructuring of the loan, stating that it was Defendants' intention for the revolver, and not the term loans, to be used to fund the actual development of the Real Estate Projects and pay their debts as they became due.

70. Defendants' distribution of the proceeds from the January 2006 Loans to themselves as full repayment of equity contributions and a significant above-market profit meant that all future development costs of the Real Estate Projects would be funded by only two sources: (i) the revolver, and (ii) the anticipated revenue from the sale of the lots by the Operating Subsidiaries.

71. Upon information and belief, Defendants knew that this would leave Debtors insolvent and/or unable to pay their debts as they became due.

72. Upon information and belief, Defendants' joint plan and intent was to distribute as much of the loan proceeds to themselves as full equity repayment and profits, and to manipulate the forecasts and budgets to facilitate their plan.

73. Upon information and belief, by October 23, 2005, Defendants had decided and agreed to pay themselves, collectively, \$144 million of the loan proceeds from the January 2006 Loans. In order to make this happen, Defendants needed to take

1 money from the Development Fund needed by Debtors to pay their debts as they
2 became due and remain solvent. In order to free up these proceeds from the loans to
3 pay themselves, LBREP proposed, on or around October 23, 2005, a revised loan
4 structure, sizing the revolver at a maximum of \$75 million, but contemplating a
5 revolver as low as \$50 million, to fund all of the Real Estate Projects.

6 74. However, Defendants knew that this would be insufficient to allow Debtors
7 to remain solvent and pay their debts as they became due.

8 75. For example, in or around October 2005, the LBREP Defendants recognized
9 that \$75 million was inadequate, and that the revolver would need to be at least
10 \$100-125 million.

11 76. SunCal also knew that \$75 million would be insufficient. In or around
12 October 2005, after conducting financial analyses of the Debtors' business and cash
13 needs, the SunCal Defendants determined that \$75 million would not permit the
14 Debtors to pay their debts as they became due, and that to keep from becoming
15 insolvent, the Debtors would need at least \$125 million.

16 77. Upon information and belief, despite knowing that a \$75 million revolver to
17 fund the Real Estate Projects would be insufficient to permit Debtors to remain
18 solvent and pay their debts as they became due, by the beginning of November
19 2005, Defendants had decided and agreed to proceed with only a \$75 million
20 revolver, and to pay themselves \$144 million.

21 78. Upon information and belief, by November 2005, Defendants had also
22 changed the loan structure to require that the Borrower maintain, at all times, a
23 minimum of \$50 million in liquidity. To achieve that, the loan documents
24 contemplated that at closing, \$25 million would be set aside to fund a "Debt Service
25 Reserve" which the Debtors could not use, but served as the collateral for the loans.
26 However, the Borrower would need to also set aside an additional \$25 million from
27 some other source. As \$144 million was to be withdrawn from the Borrower and
28 Operating Subsidiaries at closing (along with a significant above-market profit), the

1 only other source for an additional \$25 million at closing was the revolver (which
2 was supposed to fund the development of the Real Estate Projects).

3 79. In or around November 2005, the SunCal Defendants recognized that this
4 might further impair the Debtors' ability to pay their debts as they become due, and
5 expressed their concern that the liquidity covenant ate into the revolver, causing it
6 to be \$25 million less.

7 80. After further review of the financial obligations of Debtors, the SunCal
8 Defendants concluded that the Development Fund revolver should be between \$91
9 million and \$170 million to cover any delays in sales.

10 81. Upon information and belief, Defendants were acutely aware at that time that
11 there was a significant probability that there would be delays in the forecasted sales
12 of the lots being developed by Debtors.

13 82. In or around March 2005, the LBREP Defendants recognized that, because
14 of the long-term nature and size of the deal, that it would be particularly susceptible
15 to a slowdown in the growth of the real estate market.

16 83. In or around September 2005, the LBREP Defendants recognized that they
17 needed to be provided with absorption data on a regular basis in light of their
18 awareness of the discussions of the decline of the housing market.

19 84. In March 2006, the LBREP Defendants identified a number of risks with the
20 California residential real estate market, marking the Inland Empire, Orange
21 County, and Bakersfield all as having a negative short term outlook, and giving
22 Orange County a negative long-term outlook. This assessment was made based on
23 data and projections from December 2005.

24 85. The rating agencies S&P and Moody's also recognized the risks in the
25 housing market in their first-time ratings of the Borrower and the loan transactions,
26 as well as the reliance of the Borrower and the Operating Subsidiaries on their lot
27 sales projections.

1 86. In its December 12, 2005 report, Moody's stated that its ratings "reflect the
2 underlying geographic concentration of the projects, wherein a recession and
3 housing decline in [Southern California], similar to the one that occurred in the
4 early 1990's, could slow the expected absorption rates of the developed lots and
5 stretch out the carrying costs for a number of years, resulting in stressed cash flows
6 and a significant diminution in the initial over collateralization....The projects also
7 face considerable market risk as there are very few contractual advance lot sales as
8 in some other land development transactions...." Moody's further noted that the
9 projects will not begin "generating meaningful cash flow until 2008. This means
10 that the \$75 million revolver will need to be utilized in order to help make debt
11 service payments;"

12 87. In its December 8, 2005 report, S&P noted that "the borrower is highly
13 reliant upon future lot sales to finance construction and repay loans at maturity...."

14 88. Further, when presenting the proposed loans to potential lenders in the Fall of
15 2005, upon information and belief, Defendants relied heavily on the appraised
16 values of the Real Properties to demonstrate that the Borrower and Operating
17 Subsidiaries were solvent (and would remain so after the closing of the loans).
18 Appraisals of Summerwind and McAllister were conducted by Cushman &
19 Wakefield ("Cushman") in early August, 2005, and an appraisal of McSweeny was
20 conducted in early September, 2005. Appraisals of the Real Properties were not
21 conducted again until March 2006, after the loans had closed.

22 89. However, upon information and belief, in the Fall of 2005, the SunCal
23 Defendants attempted to obtain more favorable projections from Cushman in
24 advance of the lender and rating agency presentations. For example, in or around
25 November 2005, the SunCal Defendants discussed internally the possibility of
26 going back to the appraisers to try and obtain more favorable numbers.

27 90. Moreover, upon information and belief, SunCal's budgets and projections for
28 the Real Estate Projects already were outdated and off schedule by early January

2006, before the loan even closed. For example, in or around January 2006, a third party consulting company informed the SunCal Defendants that the current budget needs to be reviewed and amended to reflect higher construction costs, and that the current construction schedule (developed in September 2005) was outdated in many areas.

91. In other words, by the Fall of 2005, Defendants knew or should have known that (i) there was a very real risk that the absorption rates in the relevant real estate markets would slow down, which would delay expected lot sales, which would in turn delay projected incoming cash flow from those sales; (ii) the budgets and projections for the Real Estate Projects already were outdated and off schedule; (iii) in light of the market risks and budget inaccuracies, the initial appraisals of the Real Properties conducted in August and September of 2005 contained inflated values for the Real Properties; (iv) the proposed \$75 million revolver to fund the Development Fund was severely undersized, and considering the loan liquidity requirements, would provide the Borrower and the Operating Subsidiaries with insufficient capital to pay their debts as they became due; and (v) the distribution of \$144 million in equity and profits to Defendants would leave the Borrower and the Operating Subsidiaries insolvent.

92. Defendant Magstadt was significantly involved with the underlying real estate development projects, and therefore, knew or should have known of the expected progression of the projects and inability to achieve the cash flow projections necessary to adequately fund the projects.

93. Defendant Lee was aware of and signed (on behalf of Lakeside Capital) the funding requests of Borrower and the Operating Subsidiaries, and therefore, had direct knowledge of the operations, budgets, and cash flow of the Borrower and Operating Subsidiaries.

94. Defendants Andrews and Elieff were aware of and participated in correspondence among Defendants in the fall of 2005 concerning the size and

1 structure of the proposed loans and distributions to Defendants from the proceeds of
2 those loans.

3 95. Upon information and belief, *zero* lots were sold in 2006, with *zero* revenue
4 from lot sales. Consequently, according to the SunCal Defendants' own projections,
5 the revolver should have been *at least* \$170 million.

6 96. Despite having discussed and been fully aware of the facts and risks,
7 Defendants nevertheless caused Borrower and the Operating Subsidiaries to enter
8 into a loan and make a \$144 million distribution to Defendants that left Debtors
9 insolvent and undercapitalized.

10 **C. The January 2006 Loans**

11 97. On or around January 19, 2006, Lehman/SunCal Master borrowed a total of
12 \$320 million. The \$320 million obligation was structured as: (1) a revolving credit
13 facility of \$75 million (the "**Revolver**") and term loan facility of \$160 million
14 under a First Lien Credit Agreement ("**First Lien Term Loan**"); and (2) a \$85
15 million term loan facility under a Second Lien Credit Agreement ("**Second Lien**
16 **Term Loan**") (collectively, sometimes hereinafter referred to as the "**January**
17 **2006 Loans**").

18 98. Defendants caused the obligations of Lehman/SunCal Master under these
19 agreements to be guaranteed by the Operating Subsidiaries, and secured by first and
20 second liens cross collateralized against the Real Properties and other assets. More
21 specifically, LBREP-Lakeside and SunCal granted LCPI a lien against essentially
22 all of the assets of debtor Lehman/SunCal Master for the full amount of the January
23 2006 Loans (the "**Lehman/SunCal Master Lien**"), as well as liens against
24 essentially all of the assets of each of the Operating Subsidiaries also in the full
25 amount of the January 2006 Loans ("**Lehman/SunCal Subsidiary Liens**").

26 99. The Trustee is informed and believes, and on that basis alleges, as a result of
27 the January 2006 Loans, the Debtors were collectively saddled with \$320 million in
28 secured debt and the significant interest thereon.

1 100. However, Debtors did not receive the benefit of the vast majority of the
2 January 2006 Loan proceeds. Of the \$245 million allegedly loaned to
3 Lehman/SunCal Master under the First and Second Lien Term Loans, a \$144
4 million purported “equity distribution” (the “**\$144 Million Distribution**”) was
5 immediately paid to Defendants. Upon information and belief, on or around
6 January 20, 2006, approximately \$116.3 million was paid to LBREP-Lakeside, and
7 approximately \$27.6 million was paid to SCC Ranch. Upon information and belief,
8 of the \$116.3 million paid to LBREP-Lakeside, approximately \$108.8 million was
9 paid to SC Master, and \$7.5 million was paid to Lakeside Capital.

10 101. Further, the \$144 Million Distribution did not solely represent the return of
11 equity to Defendants. Upon information and belief, \$41.6 million of the \$144
12 Million Distribution represented a distribution of unearned profits to Defendants.

13 102. Upon information and belief, Lakeside Capital oversaw and executed the
14 distribution of the \$144 Million from Borrower to Defendants.

15 103. Upon information and belief, some of the \$144 Million Distribution was
16 conveyed, either directly or indirectly to other Defendants, including SC Master
17 Parent and SCC Acquisitions, Inc. Pursuant to Section 7.6(c) of the First Lien Loan
18 Agreement, Borrower was permitted to pay a dividend on the designated Closing
19 Date to one or more of “Bruce Elieff, SunCal, SCC Acquisitions LLC, SCC Ranch
20 Ventures LLC, or LBREP Lakeside SC Master I, LLC, in an aggregate amount not
21 exceeding 144mm.” In earlier drafts of the agreement and term sheet, “SunCal” was
22 the defined term for “SCC Acquisitions, Inc.”

23 104. Debtors did not enjoy the benefit of the \$144 million Distribution for which
24 they all were liable, nor did they receive any value whatsoever on account of the
25 transfer of the \$144 Million Distribution to Defendants.

26 105. The Trustee is informed and believes, and on that basis alleges, that
27 Defendants LBREP-Lakeside, SCC Ranch, Bruce Elieff, Mark Magstadt, Melvin T.
28 Andrews, Ronald W. Lee, and Does 1 through 10 breached their fiduciary duties to

1 the Debtors and the creditors of the Debtors, by authorizing and committing the
2 Debtors to incur the obligations of the January 2006 Loans, to transfer the \$144
3 Million Distribution to Defendants LBREP-Lakeside and SCC Ranch, and to incur
4 the Third Lien Loans (as defined below).

5 106. Pursuant to the January 18, 2006 Authorizing Resolution of Borrower
6 executed in connection with the January 2006 Loans, Bruce Elieff, Steve Elieff,
7 Bruce Cook, and Ed Nolan (all officers and/or directors of the SunCal Defendants)
8 were all authorized, directed, and empowered to enter into, execute, deliver, and
9 perform on behalf of the Borrower and the Operating Subsidiaries for the purpose
10 of entering into the January 2006 Loans and related transactions. Elieff signed the
11 First and Second Lien Credit Agreements (and related agreements) on Borrower's
12 behalf. Bruce Elieff also was an authorized agent of the Operating Subsidiaries, and
13 signed the First Lien Guarantee and Collateral Agreement (and related agreements)
14 on their behalf.

15 107. Upon information and belief, Defendants Melvin Andrews and Ronald Lee,
16 as designated representatives of Lakeside Capital, authorized and caused Lakeside
17 Capital to consent to and authorize the January 2006 Loans and related transactions.
18 Andrews and Lee, as designated representatives of LBREP-Lakeside, also
19 authorized and caused Debtors to enter into the January 2006 Loans and related
20 transactions.

21 108. Upon information and belief, Defendants SC Master Parent, SC Master,
22 LBREP-Lakeside, SCC Acquisitions, Inc. and SCC Ranch entered into Authorizing
23 Resolutions and otherwise authorized and caused Debtors to enter into the loan
24 transactions.

25 109. In the Lien Credit Agreements, the Borrower also made and agreed to
26 affirmative and negative covenants, including that it would cause the Operating
27 Subsidiaries to comply with these covenants. Further, the Lien Credit Agreements
28 recognize that the Operating Subsidiaries are parties to the overall loan transaction,

1 as they define the "Loan Parties" as being "the Borrower and each Subsidiary of the
2 Borrower that is a party to a Loan Document," and each of the Operating
3 Subsidiaries were parties to one or more such loan documents.

4 110. The Trustee is informed and believes, and on that basis alleges, that most of
5 the \$320 million January 2006 Loan proceeds went to one Lehman-related entity or
6 another. Besides the \$144 Million Distribution, \$10.6 million was paid to LCPI for
7 its arrangement and administrative fee. Approximately \$62 million went to repay
8 loans owing to another Lehman entity, Lehman, Ali. This value received by the
9 Debtors is further offset by the fact that debtor McSweeney paid approximately
10 \$21.5 million into escrow prior to closing.

11 111. The Trustee is informed and believes, and on that basis alleges, that while the
12 Operating Subsidiaries were forced to grant security interests in the Real Properties
13 to secure the entire \$320 million in loans to Lehman/SunCal Master, each
14 Operating Subsidiary received very little of the loan proceeds. Specifically,
15 McAllister, McSweeny, and Summerwind received only \$20 million, \$17.7 million,
16 and \$24 million, respectively, to repay obligations owed to Lehman Ali. Moreover,
17 the Subsidiary Debtors subsequently contributed cash (approximately \$45 million -
18 apparently from the sale of property) in repayment of the \$320 million in loans to
19 Lehman/SunCal Master.

20 112. The Trustee is informed and believes, and on that basis alleges, that the only
21 concrete economic benefit received by the Operating Subsidiaries in exchange for
22 securing Lehman/SunCal Master's obligations in connection with the January 2006
23 Loans (i.e., the repayment of the \$320 million in loans) consisted of monies
24 sufficient to repay the much lesser existing obligations owing to Lehman Ali,
25 another Lehman-related entity.

26 113. Upon information and belief, the Debtors did not receive reasonably
27 equivalent value for the transfer of the \$144 Million Distribution and, in fact, they
28

1 received no value whatsoever for such transfer. Nor did the Debtors receive any
2 indirect, intangible economic benefits.

3 114. Upon information and belief, given the liquidity of the Debtors and market
4 conditions at the time, the transfer of the \$144 Million Distribution to Defendants
5 left the Debtors with remaining assets that were unreasonably small in relation to
6 the business and transaction. Upon information and belief, Defendants intended
7 that the Debtors incur, or believed or reasonably should have believed that the
8 Debtors would incur, debts beyond the Debtors' ability to pay as they became due.

9 115. Upon information and belief, the Debtors were insolvent by the transfer of
10 the \$144 Million Distribution to Defendants or were rendered insolvent by such
11 transfer. Had Debtors not made the \$144 Million Distribution to Defendants,
12 Debtors would have remained solvent, or would have remained solvent for a longer
13 period of time.

14 116. The Trustee is informed and believes, and on that basis alleges, that \$25
15 million of the January 2006 Loan proceeds were set aside to fund a "Debt Service
16 Reserve" which the Debtors could not use, but served as the collateral for the
17 January 2006 Loans. The requirement to fund this Debt Service Reserve meant that
18 such monies could not be used for the development of the Real Properties, or any
19 other purpose other than the payment of interest on the January 2006 Loans, during
20 a substantial portion of the loan term. Similarly, because of the \$50 million
21 liquidity requirement, there was another \$25 million on the revolving credit line
22 that was never made available to the Debtors between the January 19, 2006,
23 funding date and March, 2007, resulting in a combined \$50 million of lost liquidity
24 for the Debtors.

25 117. Upon information and belief, the \$144 Million Distribution was made at a
26 time when the Debtors were not close to completing the work on the Real Estate
27 Projects, which had to be developed and sold in order for Debtors to be able to pay
28 their debts. However, the amount of funds received from the gross amount of \$320

1 million of the January 2006 Loans was reduced by the paydowns to Lehman Ali
2 (\$61.7 million), the requirement to fund the Debt Service Reserve Account (\$25
3 million), transaction fees and expenses, the majority of which were paid to other
4 Lehman entities (approximately \$11.3 million), and the \$144 Million Distribution.
5 Thus, after these reductions in the aggregate amount of \$242 million, and after
6 taking into consideration the additional \$25 million from the Revolver set aside to
7 meet the loan liquidity requirements, the Debtors had at most only \$54 million to
8 carry out the development of the Real Properties, to make interest payments on the
9 January 2006 Loans, and to fund its other business obligations.

10 118. In or around November 2005 Defendants misrepresented to potential lenders
11 that there would be \$104 million in cash available to Debtors for the development
12 of the Projects when the proposed loan closed. This \$104 million represented the
13 \$25 million Debt Service Reserve, which could not be used for future development
14 expenses, the \$75 million Revolver, \$25 million of which could not be used for
15 future development expenses due to the liquidity requirements of the loan, and \$4
16 million cash. Contrary to Defendants' misrepresentations, at closing, Debtors would
17 have only \$54 million available to be used for future development expenses at the
18 Real Estate Projects, which, by LBREP's and SunCal's own projections, would be
19 insufficient to fund future development. For example, total project costs were
20 estimated to be approximately \$197.2 million in 2006 alone.

21 119. Upon information and belief, at the time the \$144 Million Distribution was
22 transferred to Defendants, Debtors were only in the beginning stages of developing
23 the Real Properties and could not reasonably expect a source of cash flow until the
24 development projects were completed and sold. In fact, upon information and
25 belief, Lehman/SunCal Master, through its subsidiary SummerWind, had not
26 completed the acquisition of the SummerWind property; nor had Lehman/SunCal
27 Master acquired the Patterson Ranch property that was contemplated to be
28 purchased with the January 2006 Loan proceeds.

1 120. Upon information and belief, Defendants knew or reasonably should have
2 known at the time the \$144 Million Distribution was conveyed that the \$144
3 Million Distribution would leave the Debtors without sufficient operating capital to
4 pay debts as they became due or to complete the contemplated development of the
5 Real Properties and would render Debtors insolvent, yet with callous disregard of
6 the greatly diminished prospects for current and future creditors of the Debtors to
7 be repaid, and motivated by the overriding desire to obtain the wrongful \$144
8 Million Distribution, Defendants, nonetheless authorized the transfer of the \$144
9 Million Distribution.

10 **C. The February 2007 Loans**

11 121. By July 2006, six months after the closing of the January 2006 Loans, it was
12 clear that lot sales at the Real Estate Projects were going to be significantly delayed
13 due to a slowdown in absorption rates in the relevant markets, and consequently,
14 that Debtors would not see the incoming cash flow that was necessary to fund the
15 Real Estate Projects. As a result, in the Fall of 2006, SunCal and LBREP discussed
16 the likely need to call equity capital to meet the development needs of the Projects,
17 with the expected shortfall to be approximately \$91 million.

18 122. Rather than re-invest that much equity into the Real Estate Projects,
19 Defendants sought to have the January 2006 Loans restructured and to receive
20 additional funding via a Third Lien Loan.

21 123. The Trustee is informed and believes, and on that basis alleges, on February
22 6, 2007, a Third Lien Credit Agreement was entered into by Lehman/SunCal
23 Master, which allegedly provided for an additional \$75 million term loan (the
24 "**Third Lien Loan**"), guaranteed once again by the Operating Subsidiaries and
25 secured by third priority liens ("**Third Lien**") against the Real Properties.

26 124. Upon information and belief, the Third Lien Loan for \$75 million was
27 necessary because, as alleged above, the Debtors were left with unreasonably small
28

1 capital to engage in the business of real property development on the scale
2 contemplated by the Debtors.

3 125. The Trustee is informed and believes, and on that basis alleges, just as with
4 the January 2006 Loans, in the Third Lien Loans LBREP-Lakeside and SCC Ranch
5 negotiated the terms of the Third Lien Loan on behalf of the Debtors. From the \$75
6 million loaned to Lehman/SunCal Master pursuant to the Third Lien Loan, \$50
7 million was paid out of escrow directly to pay down obligations on the January
8 2006 Loans.

9 126. The Trustee is informed and believes, and on that basis alleges, that
10 Defendants exposed Debtors to an unreasonably high probability of default on the
11 January 2006 Loans and the Third Lien Loan. Defendants negotiated the Fourth
12 Amendment and Waiver to the First Lien Credit Agreement, which required that the
13 cash in the Development Account be increased from \$25 million to \$50 million by
14 March 31, 2008. LBREP-Lakeside and SCC Ranch knew or reasonably should
15 have known that the Debtors would be unable to comply with this Amendment and
16 produce an additional \$25 million in cash within 60 days.

17 127. Further, Defendants knew or should have known that the Third Lien Loan
18 was going to provide insufficient funds to permit the Debtors to continue to fund
19 the Real Estate Projects and pay their debts as they became due. For example, in or
20 around April 2007, the LBREP Defendants and their agents recognized that the
21 Borrower would have liquidity problems in 2007 if no sales occurred until later that
22 year, and that the housing market in California had hit a floor.

23 128. In its July 17, 2008 downgrade of Lehman/SunCal Master and the Loan
24 facilities, S&P explicitly recognized that Lehman/SunCal Master was an
25 “undercapitalized borrower.”

26 129. Upon information and belief, within months of transferring the \$144 Million
27 Distribution to Defendants, the Debtors notified their lenders that a substantial
28 additional infusion of cash was needed to be able to continue to develop the Real

1 Properties. Ultimately, the Debtors defaulted on their obligations in connection with
2 the January 2006 Loans and the Third Lien Loan, it became clear that the Loans
3 could not be repaid, and the Debtors abandoned their plans to develop the Real
4 Properties. Finally, in September of 2008, the involuntary petitions were filed
5 against the Debtors.

6 **D. The Alter Ego Relationships Among Defendants**

7 ***The LBREP Defendants***

8 130. The Trustee alleges, upon information and belief, that the LBREP
9 Defendants at all times failed to observe corporate formalities and acted with such a
10 unity of interest and ownership that they rendered themselves as alter egos such that
11 their separate personalities no longer exist. As such, the failure to disregard their
12 corporate “structure” would result in fraud or injustice by allowing them to retain
13 the spoils of their improper actions, as alleged and discussed in more detail below.

14 131. The complete domination exerted over the finances, business, and policies of
15 LBREP-Lakeside by SC Master, and of SC Master by SC Master Parent, was
16 exercised for the purpose of defrauding Debtors’ creditors and unlawfully
17 distributing at least \$108.8 million to the LBREP Defendants.

18 132. Pursuant to the Operating Agreement of LBREP-Lakeside, SC Master Parent
19 was permitted to exercise all rights of SC Master. Upon information and belief, SC
20 Master Parent holds a 98% interest in SC Master. Upon information and belief, SC
21 Master Parent is owned by various LBREP-affiliated equity funds.

22 133. Upon information and belief, the LBREP Defendants made interest-free
23 loans to each other in connection with the Real Estate Projects.

24 134. Upon information and belief, SC Master and Lakeside Capital treated the
25 assets of LBREP-Lakeside as their own, and SC Master Parent treated the assets of
26 SC Master as its own. For example, the \$108.8 million that was transferred to SC
27 Master as part of the \$144 Million Distribution was subsequently transferred
28 directly to SC Master Parent.

1 135. Upon information and belief, LBREP-Lakeside, SC Master, and SC Master
2 Parent were controlled by the same individuals acting for the LBREP Defendants
3 in structuring the Loans and the \$144 Million Distribution were the same and were
4 also principals of LBREP.

5 (a) Karen Blakely was an authorized signatory of SC Master and SC
6 Master Parent and a designated representative of SC Master, the Managing Member
7 of LBREP-Lakeside. Blakely was heavily involved in structuring the Loans;

8 (b) Frank Cappello was an agent of SC Master, the Managing Member of
9 LBREP-Lakeside, and was heavily involved with the structuring of the Loan, as
10 well as the planned use of the proceeds from the Loan (including the \$144 million
11 distribution);

12 (c) Rodolpho Amboss was an authorized signatory of SC Master, the
13 Managing Member of LBREP-Lakeside, and SC Master Parent, as well as all three
14 of the members of SC Master and four of the members of SC Master Parent;

15 (d) Additionally, Francis Gilhool and Tom Chilton regularly acted on
16 behalf of and represented SC Master, SC Master Parent, and LBREP-Lakeside in
17 connection with the Real Estate Projects, Loans, and \$144 Million Distribution.

18 136. Upon information and belief, SC Master Parent undercapitalized SC Master,
19 who, along with Lakeside Capital, undercapitalized LBREP-Lakeside, who, along
20 with SCC Ranch, undercapitalized Borrower. All Defendants caused Borrower and
21 Operating Subsidiaries to be undercapitalized.

22 ***The SunCal Defendants***

23 137. The Trustee alleges, upon information and belief, that Defendants SCC
24 Ranch, SCC Acquisitions, LLC, and SCC Acquisitions, Inc. (the “**SunCal**
25 **Corporate Defendants**”) at all times failed to observe corporate formalities and
26 acted with such a unity of interest and ownership that they rendered themselves as
27 alter egos such that their separate personalities no longer exist. As such, the failure
28 to disregard their corporate “structure” would result in fraud or injustice by

1 allowing them to retain the spoils of their improper actions, as alleged and
2 discussed in more detail below.

3 138. The complete domination exerted over the finances, business, and policies of
4 SCC Ranch by SCC Acquisitions, LLC, and of both of these entities by SCC
5 Acquisitions, Inc., was exercised for the purpose of defrauding Debtors' creditors
6 and unlawfully distributing at least \$27.5 million to the SunCal Defendants.

7 139. Upon information and belief, the SunCal Defendants made interest-free loans
8 to each other in connection with the Real Estate Projects.

9 140. Upon information and belief, SCC Acquisitions, Inc., treated the assets of
10 SCC Acquisitions, LLC and SCC Ranch as its own. For example, the \$27.5 million
11 that was transferred to SCC Ranch as part of the \$144 Million Distribution was
12 almost immediately transferred directly to SCC Acquisitions, Inc.

13 141. Upon information and belief, in a Limited Guaranty that it provided LBREP-
14 Lakeside, SCC Acquisition, Inc. acknowledged that it "will have a direct or indirect
15 financial interest in the Projects and will benefit from [LBREP-Lakeside's]
16 investment in the Projects." Further, pursuant to the Second Amendment to the
17 Operating Agreement of the Borrower, SCC Acquisitions, Inc. provided to the
18 Borrower a guarantee of any reconciliation payments that SCC Ranch might have
19 been required to pay under that Operating Agreement.

20 142. All of the principal players for the SunCal Defendants that were involved in
21 structuring the Loans and the \$144 Million Distribution, and developing the Real
22 Properties, were the same. For example:

23 (a) Bruce Elieff, the manager and designated representative of SCC
24 Ranch, also was the owner and President of SunCal. While Elieff was not, upon
25 information and belief, a member of SCC Acquisitions, LLC, or SCC Ranch,
26 pursuant to Section 7.6(c) of the First Lien Loan Agreement, Borrower was
27 permitted to pay him (personally) a dividend on the designated Closing Date, "in an
28 aggregate amount not exceeding 144mm";

1 (b) Mark Magstadt, the Chief Operating Officer and designated
2 representative of SCC Ranch, also was the Chief Operating Officer of the SunCal
3 Companies.

4 (c) Bruce Cook, the General Counsel of SunCal and Designated
5 Representative of SunCal Management, also was an authorized signatory of
6 Debtors and General Counsel of SCC Ranch;

7 (d) Stephan Elieff, the Chief Investment Officer of SunCal, also was the
8 President of each Operating Subsidiary and Co-Manager of SCC Ranch.

9 143. Upon information and belief, Elieff also was the Manager and authorized
10 signatory of SunCal Management, LLC, another SunCal entity that entered into
11 Development Agreements with SCC Ranch (who was represented by Elieff) to
12 manage the development of the properties.

13 144. Upon information and belief, SC Master Parent undercapitalized SC Master,
14 who, along with Lakeside Capital, undercapitalized LBREP-Lakeside, who, along
15 with SCC Ranch, undercapitalized Borrower. All Defendants caused Borrower and
16 Operating Subsidiaries to be undercapitalized.

17 ***Lakeside Capital***

18 145. Lakeside Capital and LBREP-Lakeside acted with such a unity of interest
19 and ownership that they rendered themselves as alter egos such that their separate
20 personalities no longer exist. As such, the failure to disregard their corporate
21 "structure" would result in fraud or injustice by allowing them to retain the spoils of
22 their improper actions.

23 146. The complete domination exerted over the finances, business, and policies of
24 LBREP-Lakeside by Lakeside Capital, a member of and agent for Defendant
25 LBREP-Lakeside, was exercised for the purpose of defrauding Debtors' creditors
26 and unlawfully distributing at least \$7.5 million to the Lakeside Defendants.

27 147. Upon information and belief, SC Master and Lakeside Capital treated the
28 assets of LBREP-Lakeside as their own. Lakeside Capital, who received the \$7.5

1 million distribution, has three members: Defendant Lee, Marsha Jennings, and
2 Lakeside Capital, LLC. The majority owner of Lakeside Capital LLC is Defendant
3 Andrews.

4 148. All of the principal players for the Lakeside Capital Defendants that were
5 involved in structuring the Loans and the \$144 Million Distribution were the same.
6 For example:

7 (a) Melvin Andrews was an authorized signatory and designated
8 representative of LBREP-Lakeside, and was a member, authorized signatory and
9 designated representative of Lakeside Capital. Andrews authorized and caused
10 Lakeside Capital to consent to the Loan, and Borrower to enter into the Loan.
11 Andrews was aware of and participated in correspondence among Defendants in the
12 fall of 2005 concerning the size and structure of the proposed loans and
13 distributions to Defendants from the proceeds of those loans;

14 (b) Ronald Lee was an authorized signatory and designated representative
15 of LBREP-Lakeside, and was a member, authorized signatory and designated
16 representative of Lakeside Capital. Lee was aware of and signed (on behalf of
17 Lakeside Capital) the funding requests of Borrower and the Operating Subsidiaries,
18 and therefore, had direct knowledge of the operations, budgets, and cash flow of the
19 Borrower and Operating Subsidiaries. Lee authorized and caused Lakeside Capital
20 to consent to the Loans and Borrower to enter into the Loans.

21 (c) Marsha Jennings was an authorized signatory and designated
22 representative of Lakeside Capital, and was the Executive Vice President of each
23 Operating Subsidiary. Jennings approved funding requests to Borrower on behalf of
24 Lakeside Capital and signed the First Lien Loan Closing Certificate (with Andrews
25 and Lee) for Lakeside Capital. Jennings was responsible for the actual transfer of
26 the \$144 Million Distribution from Debtors to Defendants.

27 149. Upon information and belief, SC Master Parent undercapitalized SC Master,
28 who, along with Lakeside Capital, undercapitalized LBREP-Lakeside, who, along

1 with SCC Ranch, undercapitalized Borrower. All Defendants caused Borrower and
2 Operating Subsidiaries to be undercapitalized.

3 **E. The Relationship Between the Borrower and the Operating Subsidiaries**

4 ***Debtors Were the Alter Egos of One Another***

5 150. Upon information and belief, the Debtors all acted with such a unity of
6 interest and ownership that they rendered themselves as alter egos such that their
7 separate personalities no longer exist. As such, the failure to disregard their
8 corporate structure would result in fraud or injustice by allowing Defendants to
9 retain the spoils of their improper actions.

10 151. As stated herein, Borrower was an instrument for the joint venture
11 established by the Defendants solely to pool the assets of the Operating
12 Subsidiaries. The Borrower and Operating Subsidiaries commingled their funds,
13 and Defendants used the pooled assets of each Operating Subsidiary, which were
14 kept at the Borrower level, to borrow from one to pay the debts of another. For
15 example, in or around November 2006, the Lakeside Capital Defendants recognized
16 that they had previously allowed the Operating Subsidiaries to borrow from one
17 another and that they treated the Operating Subsidiaries as one project.

18 152. Upon information and belief, when lots were sold by each Operating
19 Subsidiary, and when funds were received by the Borrower pursuant to the Loan
20 Agreements, the proceeds from such sales and/or loans were transferred to
21 Borrower, who pooled the funds and used them to pay the debts of all of the
22 Operating Subsidiaries. In other words, the Borrower used the assets of each
23 Operating Subsidiary as its own, and each Operating Subsidiary used the assets of
24 the Borrower and the other Operating Subsidiaries as its own. As a result, neither
25 Borrower nor the Operating Subsidiaries respected their corporate forms.

26 153. Upon information and belief, all actions taken by the Borrower were not acts
27 of the Borrower alone, but instead, were acts of the Operating Subsidiaries. For
28

1 example, in the Lien Credit Agreements, the Borrower made numerous
2 representations and warranties on behalf of both itself and the Operating
3 Subsidiaries.

4 154. Upon information and belief, all of the principal players that were involved
5 in structuring the Loans and the \$144 Million Distribution, and developing the Real
6 Properties, were also principals of the SunCal Defendants, the LBREP Defendants,
7 and the Lakeside Capital Defendants, who structured the transaction for their own
8 benefit.

9 155. In light of these facts, Borrower and Operating Subsidiaries should be
10 considered alter egos and, as such, the transfer of the \$144 Million Distribution
11 from Borrower can therefore be treated as having been made by the Operating
12 Subsidiaries.

13 ***Borrower Acted as the Operating Subsidiaries' Agent***

14 156. The Borrower also acted as the Operating Subsidiaries' agent in participating
15 in the Loans and making the transfer of the \$144 Million Distribution. As a result,
16 the \$144 Million Distribution can therefore be treated as having been made by the
17 Operating Subsidiaries, given that the Borrower only had possession of the loan
18 proceeds, including the \$144 Million Distribution, as an agent of the Operating
19 Subsidiaries.

20 157. As a consequence, the \$144 Million Distribution was transferred by the
21 Operating Subsidiaries to LBREP-Lakeside and SCC Ranch.

22 158. Borrower entered into the First and Second Lien Credit Agreements
23 purportedly to obtain additional funds for the development of the Real Properties
24 owned by the Operating Subsidiaries. As stated above, the Borrower was an entity
25 set up by Defendants to pool the assets of the Operating Subsidiaries; while the
26 Borrower received no benefit from the Loans, the Operating Subsidiaries were the
27 real parties in interest to the Loan transactions and the intended beneficiaries of the
28 Loan proceeds. The Lien Credit Agreements recognize that the Operating

1 Subsidiaries are parties to the overall loan transaction, as they define the “Loan
2 Parties” as being “the Borrower and each Subsidiary of the Borrower that is a party
3 to a Loan Document,” and each of the Operating Subsidiaries were parties to one or
4 more such loan documents. Borrower was authorized to, and did in fact, act on their
5 behalf.

6 159. Further, in the Lien Credit Agreements, representations and warranties were
7 made by the Borrower on behalf of the Operating Subsidiaries to induce the lenders
8 and their agents to enter into the loan transaction, including but not limited to
9 representations and warranties: (i) that, among other things, the proceeds of the loan
10 transactions would not be used to violate any law or contractual obligations of the
11 Borrower or the Operating Subsidiaries; (ii) that the use of the proceeds would not
12 result in or require the creation or imposition of any liens on any property or
13 revenue of the Borrower or the Operating Subsidiaries; (iii) regarding the
14 consolidated balance sheet of the Borrower and its consolidated Subsidiaries; (iv)
15 regarding the Borrower and Operating Subsidiaries’ corporate structures and
16 compliance with law; (v) that the Borrowers and Operating Subsidiaries were not
17 aware of any threatened or actual litigation; (vi) that the Borrower and Operating
18 Subsidiaries were not in default; (vii) that the Borrower and Operating Subsidiaries
19 had all valid titles or leasehold interests in the relevant properties; (viii) that the
20 Borrower and the Operating Subsidiaries owned or were licensed to use any
21 relevant intellectual property; (ix) that the Borrower and the Operating Subsidiaries
22 had complied or would comply with all tax obligations; (x) that the Borrower and
23 Operating Subsidiaries had complied with numerous environmental concerns; and
24 (xi) that the Borrower and the Operating Subsidiaries were in compliance with
25 certain other covenants in the Lien Credit Agreements.

26 160. Upon information and belief, the principal collateral for the January 2006 and
27 February 2007 Loans was the properties owned by the Operating Subsidiaries, who
28 pledged their interest in these properties to secure funds for the development of the

1 Real Properties. Borrower, acting on behalf of all four of the Operating
2 Subsidiaries, entered into the Loan Transactions to secure these funds, which
3 should have been used to fund the development of the Real Properties.

4 161. Borrower, on behalf of the Operating Subsidiaries, represented in the Lien
5 Credit Agreements that the Operating Subsidiaries would provide liens on the Real
6 Properties as part of the January 2006 Loans. Specifically, Borrower represented
7 that, “[t]he Guarantee and Collateral Agreement is effective to create in favor of the
8 Administrative Agent, for the benefit of the Secured Parties, a legal, valid and
9 enforceable security interest in the Collateral described therein and proceeds
10 thereof....[T]he Guarantee and Collateral Agreement shall constitute a fully
11 perfected Lien on, and security interest in, all right, title, and interest of the Loan
12 Parties and the Investor Pledgors, as applicable, in such Collateral and the proceeds
13 thereof, as security for the Obligations (as defined in the Guarantee and Collateral
14 Agreement).”

15 162. As stated herein, the Borrower and Operating Subsidiaries commingled their
16 funds, and Defendants used the pooled assets of each Operating Subsidiary, which
17 were kept at the Borrower level, to borrow from one to pay the debts of another.
18 Consequently, when the Borrower received the proceeds from the January 2006 and
19 February 2007 Loans, it did so on behalf of the Operating Subsidiaries, as their
20 agent. In essence, each Operating Subsidiary pledged its asset (the Real Property)
21 for a portion of the proceeds from the Loans, and Borrower was simply their agent
22 for the purpose of the Loan transactions.

23 163. Upon information and belief, as the borrowers of the loan proceeds,
24 Operating Subsidiaries had the power, as the principals, to distribute or designate
25 the receiver of the loan proceeds.

26 164. In light of these facts, Borrower should be considered an agent of the
27 Operating Subsidiaries and, as such, the transfer of the \$144 Million Distribution
28

1 from Borrower can therefore be treated as having been made by the Operating
2 Subsidiaries.

3 ***Operating Subsidiaries As Third Party Beneficiaries***

4 165. In the alternative, the Operating Subsidiaries were the third-party
5 beneficiaries of the loan transactions that provided the funds to the Borrower that
6 were included in and comprised the transfer of the \$144 Million Distribution.

7 166. Upon information and belief, the Lien Credit Agreements were intended to
8 be expressly for the benefit of the Operating Subsidiaries, and provide the
9 Operating Subsidiaries with sufficient funds to develop the Real Properties.

10 167. The Lien Credit Agreements recognize that the Operating Subsidiaries are
11 parties to the overall loan transaction, as they define the "Loan Parties" as being
12 "the Borrower and each Subsidiary of the Borrower that is a party to a Loan
13 Document," and each of the Operating Subsidiaries were parties to one or more
14 such loan documents.

15 168. Further, in the Lien Credit Agreements, representations and warranties were
16 made to induce the lenders and their agents to enter into the loan transaction, and
17 many of these statements include representations and warranties made on behalf of
18 both the Borrower *and the Operating Subsidiaries*, including but not limited to
19 representations and warranties: (i) that, among other things, the proceeds of the loan
20 transactions would not be used to violate any law or contractual obligations of the
21 Borrower or the Operating Subsidiaries; (ii) that the use of the proceeds would not
22 result in or require the creation or imposition of any liens on any property or
23 revenue of the Borrower or the Operating Subsidiaries; (iii) regarding the
24 consolidated balance sheet of the Borrower and its consolidated Subsidiaries; (iv)
25 regarding the Borrower and Operating Subsidiaries' corporate structures and
26 compliance with law; (v) that the Borrowers and Operating Subsidiaries were not
27 aware of any threatened or actual litigation; (vi) that the Borrower and Operating
28 Subsidiaries were not in default; (vii) that the Borrower and Operating Subsidiaries

1 had all valid titles or leasehold interests in the relevant properties; (viii) that the
2 Borrower and the Operating Subsidiaries owned or were licensed to use any
3 relevant intellectual property; (ix) that the Borrower and the Operating Subsidiaries
4 had complied or would comply with all tax obligations; (x) that the Borrower and
5 Operating Subsidiaries had complied with numerous environmental concerns; and
6 (xi) that the Borrower and the Operating Subsidiaries were in compliance with
7 certain other covenants in the Lien Credit Agreements.

8 169. As stated herein, the Borrower and Operating Subsidiaries commingled their
9 funds, and Defendants used the pooled assets of each Operating Subsidiary, which
10 were kept at the Borrower level, to borrow from one to pay the debts of another.
11 Consequently, when the Borrower received the proceeds from the January 2006 and
12 February 2007 Loans, it did so for the benefit of the Operating Subsidiaries.

13 170. Thus, the Operating Subsidiaries had an interest in the proceeds from the
14 January 2006 and February 2007 Loans, including the \$144 Million Distribution.

15 171. As a consequence, the Operating Subsidiaries were the third-party
16 beneficiaries of the January 2006 and February 2007 Loans, and stood to benefit
17 from the transfer of those Loan funds to the Borrower.

18 **FIRST CLAIM FOR RELIEF**

19 **(To Recover Fraudulent Conveyance With Actual Intent**
20 **under 11 U.S.C. §§ 544(b), 550, and Cal. Civ. Code § 3439.04(a)(1))**
21 **(on behalf of Borrower's creditors against all Defendants)**

22 172. The Trustee re-alleges the foregoing paragraphs as though fully set forth
23 herein. The Trustee brings this Claim for Relief to avoid the transfer of property
24 transferred with the actual intent to hinder, delay or defraud creditors under 11
25 U.S.C. § 544(b), California Civil Code §§ 3439.04(a)(1) and 3439.07, and 11
26 U.S.C. § 550.

1 173. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the
2 following unsecured creditor of the Borrower who had a viable claim which arose
3 on or before September 10, 2008, the time the bankruptcy petition was filed:

4 (a) Unsecured creditor Standard & Poor's had a claim for analytical
5 services rendered for Borrower in the amount of \$113,000.00, which claim arose on
6 or before December 29, 2005 and which was outstanding as of the time of transfer
7 on January 19, 2006. Standard & Poor's also was an unsecured creditor of
8 Borrower as of September 10, 2008, the time the bankruptcy petition was filed.

9 174. The Trustee is informed and believes, and on that basis alleges, the transfer
10 of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-
11 Lakeside and SCC Ranch occurred during the four year period immediately
12 preceding the Petition Dates.

13 175. As set forth in Paragraphs 150-171 herein, Borrower and the Operating
14 Subsidiaries were alter egos of each other, or in the alternative, the Borrower was
15 acting as the Operating Subsidiaries' agent in participating in the Loans and making
16 the transfer of the \$144 Million Distribution, or in the alternative, the Operating
17 Subsidiaries were the third-party beneficiaries of the loan transactions that provided
18 the funds to the Borrower that were included in and comprised the transfer of the
19 \$144 Million Distribution. Consequently, Trustee also brings this Claim for Relief
20 on behalf of, *inter alia*, the following unsecured creditors of the Operating
21 Subsidiaries who had a viable claim which arose on or before September 10, 2008,
22 the time the bankruptcy petition was filed:

23 (a) As to Operating Subsidiary McSweeny: Unsecured creditor All
24 American Asphalt had a claim for work performed at the McSweeny property in the
25 amount of \$31,403.70, which claim arose on or before December 31, 2005, and
26 which was outstanding as of the time of transfer on January 19, 2006. All American
27 Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the
28 time the bankruptcy petition was filed;

1 (b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs &
2 Pinnick, Inc., had a claim for work performed at the Summerwind property in the
3 amount of \$236,590.20, which claim arose on or before December 23, 2005, and
4 which was outstanding as of the time of transfer on January 19, 2006. Signs &
5 Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10,
6 2008, the time the bankruptcy petition was filed;

7 (c) As to Operating Subsidiary McAllister: Unsecured creditor Parker
8 Printing, Inc., had a claim for work performed at the McAllister property in the
9 amount of \$43.41, which claim arose on or before January 6, 2006, and which was
10 outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,
11 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
12 bankruptcy petition was filed.

13 176. The Trustee is informed and believes, and on that basis alleges, the transfer
14 of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-
15 Lakeside and SCC Ranch was made with the actual intent to hinder, delay or
16 defraud the creditors of the Debtors in that such transfer was made with callous
17 disregard of the greatly diminished prospects of repayment of the obligations owing
18 by the Debtors to the present and future creditors of the Debtors, was motivated by
19 the overriding desire to obtain the wrongful \$144 Million Distribution, and in that
20 such transfer was part of a scheme to enrich Defendants, by controlling all of the
21 participants to a series of transactions designed to appear as arm's length
22 negotiations of several credit facilities between a borrower and a lender, but was
23 instead a series of transactions accomplished with the intent to obtain large equity
24 returns before any profits were ever realized, at the total risk and expense of the
25 creditors of the Debtors.

26 177. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact,
27 defraud the creditors of the Borrower and the Operating Subsidiaries by, inter alia,
28 (i) obtaining inflated appraised values of the Real Properties using budgets and

1 projections of future cash flow that Defendants knew or should have known were
2 overstated in light of their knowledge of the state of the housing market, (ii) using
3 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
4 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
5 the complete return of their equity, as well as profits, when no lots had yet been
6 sold, and when the Debtors would be left with insufficient funds to pay their debts
7 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
8 series of entities in an attempt to shield themselves from liability to Borrower, the
9 Operating Subsidiaries, and the creditors of the Debtors.

10 178. Specifically,

11 (a) The proceeds of the \$144 Million Distribution were transferred to
12 LBREP-Lakeside and SCC Ranch, who subsequently transferred them to SC
13 Master, SC Master Parent, Lakeside Capital, and SCC Acquisitions, Inc., all of
14 whom were insiders. As set forth herein, The LBREP Defendants were alter egos of
15 one another, the SunCal Defendants were alter egos of one another, and the
16 Lakeside Defendants were alter egos of one another. The Real Estate Projects were,
17 in reality, a joint venture between the LBREP Defendants, the SunCal Defendants,
18 and the Lakeside Defendants. This is how Defendants treated and described the
19 Real Estate Projects, both among themselves and with third parties, and this is how
20 they represented the structure of the Projects to investors. All of the principals
21 involved in the structuring of the Loans and the \$144 Million Distribution were
22 affiliated with Defendants, who all benefited directly from the \$144 Million
23 Distribution;

24 (b) Borrower did not retain possession or control of \$144 Million
25 Distribution after the transfer, and in fact, was left insolvent and without the ability
26 to pay its debts as they became due;

27 (c) Upon information and belief, Defendants concealed from and
28 misrepresented to lenders the amount of money that actually would be available to

1 Borrower and the Operating Subsidiaries for the development of the Real Estate
2 Projects upon closing of the January 2006 Loans. Upon information and belief,
3 Defendants also misrepresented to lenders the bases for the appraised values of the
4 Real Properties;

5 (d) The \$144 Million Distribution was a transfer of substantially all the
6 Borrower's assets;

7 (e) Borrower did not receive reasonably equivalent value for the transfer
8 of the \$144 Million Distribution and, in fact, received no value whatsoever for such
9 transfer. Nor did the Borrower receive any indirect, intangible economic benefits;

10 (f) Borrower either was insolvent or became insolvent shortly after the
11 \$144 Million Distribution was made;

12 (g) The \$144 Million Distribution occurred at the same time that
13 substantial debt was incurred by Borrower (in the form of the January 2006 Loan);
14 179. The Trustee is informed and believes, and on that basis alleges, Defendants
15 did not receive the transfer of the \$144 Million Distribution by Lehman/Suncal
16 Master in good faith.

17 180. By reason of the foregoing, the transfer of the \$144 Million Distribution by
18 Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch is
19 avoidable and the Trustee is entitled to recover the \$144 Million Distribution from
20 such Defendants and all subsequent transferees pursuant to 11 U.S.C. § 544(b),
21 California Civil Code §§ 3439.04(a)(1) and 3439.07, and 11 U.S.C. § 550.

22 181. In addition, in light of Defendants' fraudulent conveyance, the Trustee is
23 informed and believes, and on that basis alleges, that the Defendants were unjustly
24 enriched as a result of the transfer of the \$144 Million Distribution by
25 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
26 retained at the expense of the Debtors be recovered and returned to the Debtors as
27 restitution.
28

182. By reason of the foregoing and the wrongful acquisition or detention of the \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the imposition of a constructive trust as of the date of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates as of the Petition Date.

SECOND CLAIM FOR RELIEF

(To Recover Constructive Fraudulent Conveyance

under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.04(a)(2))

(on behalf of Borrower's creditors against all Defendants)

183. The Trustee re-alleges the foregoing paragraphs as though fully set forth herein. The Trustee brings this Claim for Relief to avoid and recover a constructively fraudulent transfer of property under 11 U.S.C. §§ 544(b) and 550 and California Civil Code §§ 3439.04(a)(2), and 3439.07.

184. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the following unsecured creditor of the Borrower who had a viable claim which arose on or before September 10, 2008, the time the bankruptcy petition was filed:

(a) Unsecured creditor Standard & Poor's had a claim for analytical services rendered for Borrower in the amount of \$113,000.00, which claim arose on or before December 29, 2005 and which was outstanding as of the time of transfer on January 19, 2006. Standard & Poor's also was an unsecured creditor of Borrower as of September 10, 2008, the time the bankruptcy petition was filed.

185. As set forth in Paragraphs 150-171 herein, Borrower and the Operating Subsidiaries were alter egos of each other, or in the alternative, the Borrower was acting as the Operating Subsidiaries' agent in participating in the Loans and making the transfer of the \$144 Million Distribution, or in the alternative, the Operating Subsidiaries were the third-party beneficiaries of the loan transactions that provided the funds to the Borrower that were included in and comprised the transfer of the \$144 Million Distribution. Consequently, Trustee also brings this Claim for Relief

1 on behalf of, *inter alia*, the following unsecured creditors of the Operating
2 Subsidiaries who had a viable claim which arose on or before September 10, 2008,
3 the time the bankruptcy petition was filed:

4 (a) As to Operating Subsidiary McSweeny: Unsecured creditor All
5 American Asphalt had a claim for work performed at the McSweeny property in the
6 amount of \$31,403.70, which claim arose on or before December 31, 2005, and
7 which was outstanding as of the time of transfer on January 19, 2006. All American
8 Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the
9 time the bankruptcy petition was filed;

10 (b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs &
11 Pinnick, Inc., had a claim for work performed at the Summerwind property in the
12 amount of \$236,590.20, which claim arose on or before December 23, 2005, and
13 which was outstanding as of the time of transfer on January 19, 2006. Signs &
14 Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10,
15 2008, the time the bankruptcy petition was filed;

16 (c) As to Operating Subsidiary McAllister: Unsecured creditor Parker
17 Printing, Inc., had a claim for work performed at the McAllister property in the
18 amount of \$43.41, which claim arose on or before January 6, 2006, and which was
19 outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,
20 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
21 bankruptcy petition was filed.

22 186. The Trustee is informed and believes, and on that basis alleges, the transfer
23 of the \$144 Million Distribution by Lehman/Suncal Master occurred during the
24 four year period immediately preceding the Petition Dates.

25 187. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact,
26 defraud the creditors of the Borrower and the Operating Subsidiaries by, *inter alia*,
27 (i) obtaining inflated appraised values of the Real Properties using budgets and
28 projections of future cash flow that Defendants knew or should have known were

1 overstated in light of their knowledge of the state of the housing market, (ii) using
2 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
3 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
4 the complete return of their equity, as well as profits, when no lots had yet been
5 sold, and when the Debtors would be left with insufficient funds to pay their debts
6 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
7 series of entities, in an attempt to shield themselves from liability to Borrower, the
8 Operating Subsidiaries, and the creditors of the Debtors.

9 188. The Trustee is informed and believes, and on that basis alleges, creditors
10 existed at the time of the transfer of the \$144 Million Distribution by
11 Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch that
12 remained unpaid as of the Petition Dates.

13 189. The Trustee is informed and believes, and on that basis alleges, the Debtors
14 received no value or less than reasonably equivalent value in exchange for the
15 transfer of the \$144 Million Distribution by Lehman/Suncal Master.

16 190. The Trustee is informed and believes, and on that basis alleges, at the time of
17 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the Debtors
18 were engaged or were about to engage in a business or a transaction for which the
19 remaining assets of the Debtors were unreasonably small in relation to the business
20 or transaction.

21 191. The Trustee is informed and believes, and on that basis alleges, at the time of
22 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the Debtors
23 intended to incur, or believed or reasonably should have believed that they would
24 incur, debts beyond their ability to pay as they became due.

25 192. The Trustee is informed and believes, and on that basis alleges, that Debtors
26 did not receive reasonably equivalent value in return for the transfer of the \$144
27 Million Distribution by Lehman/Suncal Master and that Defendants did not receive
28 the transfer of the \$144 Million Distribution in good faith.

193. By reason of the foregoing, the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants Lakeside and SCC Ranch is avoidable, and therefore, the Trustee is entitled to recover the \$144 Million Distribution from such Defendants and all subsequent transferees pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil Code §§ 3439.04(a)(2), and 3439.07.

194. In addition, in light of Defendants' fraudulent conveyance, the Trustee is informed and believes, and on that basis alleges, that the Defendants were unjustly enriched as a result of the transfer of the \$144 Million Distribution by Lehman/Suncal Master. The Trustee requests that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution.

195. By reason of the foregoing and the wrongful acquisition or detention of the \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the imposition of a constructive trust as of the date of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates as of the Petition Date.

THIRD CLAIM FOR RELIEF

(To Recover Constructive Fraudulent Transfer of Property under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.05) (on behalf of Borrower's creditors against all Defendants)

196. The Trustee re-alleges the foregoing paragraphs as though fully set forth herein. The Trustee brings this Claim for Relief to recover a constructively fraudulent transfer of property under 11 U.S.C. §§ 544(b) and California Civil Code §§ 3439.05, and 3439.07.

197. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the following unsecured creditor of the Borrower who had a viable claim which arose on or before September 10, 2008, the time the bankruptcy petition was filed:

1 (a) Unsecured creditor Standard & Poor's had a claim for analytical
2 services rendered for Borrower in the amount of \$113,000.00, which claim arose on
3 or before December 29, 2005 and which was outstanding as of the time of transfer
4 on January 19, 2006. Standard & Poor's also was an unsecured creditor of
5 Borrower as of September 10, 2008, the time the bankruptcy petition was filed.
6 198. As set forth in Paragraphs 150-171 herein, Borrower and the Operating
7 Subsidiaries were alter egos of each other, or in the alternative, the Borrower was
8 acting as the Operating Subsidiaries' agent in participating in the Loans and making
9 the transfer of the \$144 Million Distribution, or in the alternative, the Operating
10 Subsidiaries were the third-party beneficiaries of the loan transactions that provided
11 the funds to the Borrower that were included in and comprised the transfer of the
12 \$144 Million Distribution. Consequently, Trustee also brings this Claim for Relief
13 on behalf of, *inter alia*, the following unsecured creditors of the Operating
14 Subsidiaries who had a viable claim which arose on or before September 10, 2008,
15 the time the bankruptcy petition was filed:

16 (a) As to Operating Subsidiary McSweeny: Unsecured creditor All
17 American Asphalt had a claim for work performed at the McSweeny property in the
18 amount of \$31,403.70, which claim arose on or before December 31, 2005, and
19 which was outstanding as of the time of transfer on January 19, 2006. All American
20 Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the
21 time the bankruptcy petition was filed;

22 (b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs &
23 Pinnick, Inc., had a claim for work performed at the Summerwind property in the
24 amount of \$236,590.20, which claim arose on or before December 23, 2005, and
25 which was outstanding as of the time of transfer on January 19, 2006. Signs &
26 Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10,
27 2008, the time the bankruptcy petition was filed;
28

1 (c) As to Operating Subsidiary McAllister: Unsecured creditor Parker
2 Printing, Inc., had a claim for work performed at the McAllister property in the
3 amount of \$43.41, which claim arose on or before January 6, 2006, and which was
4 outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,
5 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
6 bankruptcy petition was filed.

7 199. The Trustee is informed and believes, and on that basis alleges, that Debtors
8 did not receive reasonably equivalent value in return for the transfer of the \$144
9 Million Distribution by Lehman/Suncal Master and that Defendants did not receive
10 the transfer of the \$144 Million Distribution in good faith.

11 200. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact,
12 defraud the creditors of the Borrower and the Operating Subsidiaries by, inter alia,
13 (i) obtaining inflated appraised values of the Real Properties using budgets and
14 projections of future cash flow that Defendants knew or should have known were
15 overstated in light of their knowledge of the state of the housing market, (ii) using
16 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
17 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
18 the complete return of their equity, as well as profits, when no lots had yet been
19 sold, and when the Debtors would be left with insufficient funds to pay their debts
20 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
21 series of entities, in an attempt to shield themselves from liability to Borrower, the
22 Operating Subsidiaries, and the creditors of the Debtors.

23 201. The Trustee is informed and believes, and on that basis alleges, at the time of
24 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the Debtors
25 were either insolvent and/or were rendered insolvent as a result of the transfer of
26 the \$144 Million Distribution by Lehman/Suncal Master.

27 202. The Trustee is informed and believes, and on that basis alleges, creditors
28 existing at the time of or prior to the transfer of the \$144 Million Distribution by

1 Lehman/Suncal Master and that those creditors remained unpaid as of the Petition
2 Date.

3 203. By reason of the foregoing, the transfer of the \$144 Million Distribution by
4 Lehman/Suncal Master to Defendants is avoidable, and, therefore, the Trustee is
5 entitled to recover the \$144 Million Distribution from such Defendants and all
6 subsequent transferees pursuant to 11 U.S.C. §§ 544(b) and California Civil Code
7 §§ 3439.05, and 3439.07.

8 204. In addition, in light of Defendants' fraudulent conveyance, the Trustee is
9 informed and believes, and on that basis alleges, that the Defendants were unjustly
10 enriched as a result of the transfer of the \$144 Million Distribution by
11 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
12 retained at the expense of the Debtors be recovered and returned to the Debtors as
13 restitution.

14 205. By reason of the foregoing and the wrongful acquisition or detention of the
15 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
16 imposition of a constructive trust as of the date of the transfer of the \$144 Million
17 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
18 as of the Petition Date.

19 **FOURTH CLAIM FOR RELIEF**

20 **(To Recover Fraudulent Conveyance With Actual Intent**

21 **under 11 U.S.C. §§ 544(b), 550, and Cal. Civ. Code § 3439.04(a)(1))**

22 **(on behalf of the Operating Subsidiaries' creditors against all Defendants)**

23 206. The Trustee re-alleges the foregoing paragraphs as though fully set forth
24 herein. The Trustee brings this Claim for Relief to avoid the transfer of property
25 transferred with the actual intent to hinder, delay or defraud creditors under 11
26 U.S.C. § 544(b), California Civil Code §§ 3439.04(a)(1) and 3439.07, and 11
27 U.S.C. § 550.
28

1 207. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the
2 following unsecured creditors of the Operating Subsidiaries who had a viable claim
3 which arose on or before September 10, 2008, the time the bankruptcy petition was
4 filed:

5 (a) As to Operating Subsidiary McSweeny: Unsecured creditor All
6 American Asphalt had a claim for work performed at the McSweeny property in the
7 amount of \$31,403.70, which claim arose on or before December 31, 2005, and
8 which was outstanding as of the time of transfer on January 19, 2006. All American
9 Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the
10 time the bankruptcy petition was filed;

11 (b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs &
12 Pinnick, Inc., had a claim for work performed at the Summerwind property in the
13 amount of \$236,590.20, which claim arose on or before December 23, 2005, and
14 which was outstanding as of the time of transfer on January 19, 2006. Signs &
15 Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10,
16 2008, the time the bankruptcy petition was filed;

17 (c) As to Operating Subsidiary McAllister: Unsecured creditor Parker
18 Printing, Inc., had a claim for work performed at the McAllister property in the
19 amount of \$43.41, which claim arose on or before January 6, 2006, and which was
20 outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,
21 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
22 bankruptcy petition was filed.

23 208. The Trustee re-alleges paragraphs 150-171 as though fully set forth herein.
24 Based on these allegations, the Trustee is informed and believes that it has standing
25 to bring this Claim for Relief on behalf of the unsecured creditors of the Operating
26 Subsidiaries because: (i) the Borrower and Operating subsidiaries operated in such
27 a way, with such a unity of control and interest and in such a way that it would be
28 an injustice not to confer standing here, that the \$144 Million Distribution can be

1 treated as having been made by the Operating Subsidiaries as the initial transferor;
2 or in the alternative (ii) the Borrower was at all relevant times acting as the
3 Operating Subsidiaries' agent and the Operating Subsidiaries had control over the
4 Borrower and the direction of the loan proceeds that resulted in the transfer of the
5 \$144 Million Distribution such that the \$144 Million Distribution can be treated as
6 having been made by the Operating Subsidiaries as the initial transferor; or in the
7 alternative (iii) the Operating Subsidiaries were the express and intended third-party
8 beneficiaries of the loans that provided the funds for the \$144 Million Distribution
9 and therefore stood to benefit from the transfer of those loan funds to the Borrower
10 such that they have standing to bring this Claim for Relief even if they were not the
11 original transferor of the \$144 Million Distribution.

12 209. The Trustee is informed and believes, and on that basis alleges, the transfer
13 of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-
14 Lakeside and SCC Ranch occurred during the four year period immediately
15 preceding the Petition Dates.

16 210. The Trustee is informed and believes, and on that basis alleges, the transfer
17 of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-
18 Lakeside and SCC Ranch was made with the actual intent to hinder, delay or
19 defraud the creditors of the Operating Subsidiaries in that such transfer was made
20 with callous disregard of the greatly diminished prospects of repayment of the
21 obligations owing by the Operating Subsidiaries to the present and future creditors
22 of the Operating Subsidiaries, was motivated by the overriding desire to obtain the
23 wrongful \$144 Million Distribution, and in that such transfer was part of a scheme
24 to enrich Defendants by controlling all of the participants to a series of transactions
25 designed to appear as arm's length negotiations of several credit facilities between a
26 borrower and a lender, but was instead a series of transactions accomplished with
27 the intent to obtain large equity returns before any profits were ever realized, at the
28 total risk and expense of the creditors of the Operating Subsidiaries.

211. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact, defraud the creditors of the Borrower and the Operating Subsidiaries by, inter alia, (i) obtaining inflated appraised values of the Real Properties using budgets and projections of future cash flow that Defendants knew or should have known were overstated in light of their knowledge of the state of the housing market, (ii) using these inflated appraised values to obtain the January 2006 Loans, (iii) structuring the January 2006 Loans and \$144 Million Distribution to provide Defendants with the complete return of their equity, as well as profits, when no lots had yet been sold, and when the Debtors would be left with insufficient funds to pay their debts as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a series of entities, in an attempt to shield themselves from liability to Borrower, the Operating Subsidiaries, and the creditors of the Debtors.

212. Specifically,

(a) The proceeds of the \$144 Million Distribution were transferred to LBREP-Lakeside and SCC Ranch, who subsequently transferred them to SC Master, SC Master Parent, Lakeside Capital, and SCC Acquisitions, Inc., all of whom were insiders. As set forth herein, The LBREP Defendants were alter egos of one another, the SunCal Defendants were alter egos of one another, and the Lakeside Defendants were alter egos of one another. The Real Estate Projects were, in reality, a joint venture between the LBREP Defendants, the SunCal Defendants, and the Lakeside Defendants. This is how Defendants treated and described the Real Estate Projects, both among themselves and with third parties, and this is how they represented the structure of the Projects to investors. All of the principals involved in the structuring of the Loans and the \$144 Million Distribution were affiliated with Defendants, who all benefited directly from the \$144 Million Distribution;

1 (b) Debtors did not retain possession or control of \$144 Million
2 Distribution after the transfer, and in fact, were left insolvent and without the ability
3 to pay their debts as they became due;

4 (c) Upon information and belief, Defendants concealed from and
5 misrepresented to lenders the amount of money that actually would be available to
6 Borrower and the Operating Subsidiaries for the development of the Real Estate
7 Projects upon closing of the January 2006 Loans. Upon information and belief,
8 Defendants also misrepresented to lenders the bases for the appraised values of the
9 Real Properties;

10 (d) The \$144 Million Distribution was a transfer of substantially all the
11 Operating Subsidiaries' assets, and as a result of the Lehman/SunCal Subsidiary
12 Liens, the Operating Subsidiaries pledged their remaining assets as collateral for the
13 Loans;

14 (e) Operating Subsidiaries did not receive reasonably equivalent value for
15 the transfer of the \$144 Million Distribution and, in fact, received no value
16 whatsoever for such transfer. Nor did the Operating Subsidiaries receive any
17 indirect, intangible economic benefits;

18 (f) Operating Subsidiaries either were insolvent or became insolvent
19 shortly after the \$144 Million Distribution was made;

20 (g) The \$144 Million Distribution occurred at the same time that
21 substantial debt was incurred by Operating Subsidiaries (in the form of the January
22 2006 Loan and related Liens);

23 213. The Trustee is informed and believes, and on that basis alleges, Defendants
24 did not receive the transfer of the \$144 Million Distribution by Lehman/Suncal
25 Master in good faith.

26 214. By reason of the foregoing, the transfer of the \$144 Million Distribution by
27 Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch is
28 avoidable and the Trustee is entitled to recover the \$144 Million Distribution from

1 such Defendants and all subsequent transferees pursuant to 11 U.S.C. § 544(b),
2 California Civil Code §§ 3439.04(a)(1) and 3439.07, and 11 U.S.C. § 550.
3 215. In addition, in light of Defendants' fraudulent conveyance, the Trustee is
4 informed and believes, and on that basis alleges, that the Defendants were unjustly
5 enriched as a result of the transfer of the \$144 Million Distribution by
6 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
7 retained at the expense of the Debtors be recovered and returned to the Debtors as
8 restitution.
9 216. By reason of the foregoing and the wrongful acquisition or detention of the
10 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
11 imposition of a constructive trust as of the date of the transfer of the \$144 Million
12 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
13 as of the Petition Date.

14 **FIFTH CLAIM FOR RELIEF**

15 **(To Recover Constructive Fraudulent Conveyance**

16 **under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.04(a)(2))**

17 **(on behalf of the Operating Subsidiaries' creditors against all Defendants)**

18 217. The Trustee re-alleges the foregoing paragraphs as though fully set forth
19 herein. The Trustee brings this Claim for Relief to avoid and recover a
20 constructively fraudulent transfer of property under 11 U.S.C. §§ 544(b) and 550
21 and California Civil Code §§ 3439.04(a)(2), and 3439.07.

22 218. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the
23 following unsecured creditors of the Operating Subsidiaries who had a viable claim
24 which arose on or before September 10, 2008, the time the bankruptcy petition was
25 filed:

26 (a) As to Operating Subsidiary McSweeny: Unsecured creditor All
27 American Asphalt had a claim for work performed at the McSweeny property in the
28 amount of \$31,403.70, which claim arose on or before December 31, 2005, and

1 which was outstanding as of the time of transfer on January 19, 2006. All American
2 Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the
3 time the bankruptcy petition was filed;

4 (b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs &
5 Pinnick, Inc., had a claim for work performed at the Summerwind property in the
6 amount of \$236,590.20, which claim arose on or before December 23, 2005, and
7 which was outstanding as of the time of transfer on January 19, 2006. Signs &
8 Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10,
9 2008, the time the bankruptcy petition was filed;

10 (c) As to Operating Subsidiary McAllister: Unsecured creditor Parker
11 Printing, Inc., had a claim for work performed at the McAllister property in the
12 amount of \$43.41, which claim arose on or before January 6, 2006, and which was
13 outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,
14 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
15 bankruptcy petition was filed.

16 219. The Trustee re-alleges paragraphs 150-171 as though fully set forth herein.
17 Based on these allegations, the Trustee is informed and believes that it has standing
18 to bring this Claim for Relief on behalf of the unsecured creditors of the Operating
19 Subsidiaries because: (i) the Borrower and Operating subsidiaries operated in such
20 a way, with such a unity of control and interest and in such a way that it would be
21 an injustice not to confer standing here, that the \$144 Million Distribution can be
22 treated as having been made by the Operating Subsidiaries as the initial transferor;
23 or in the alternative (ii) the Borrower was at all relevant times acting as the
24 Operating Subsidiaries' agent and the Operating Subsidiaries had control over the
25 Borrower and the direction of the loan proceeds that resulted in the transfer of the
26 \$144 Million Distribution such that the \$144 Million Distribution can be treated as
27 having been made by the Operating Subsidiaries as the initial transferor; or in the
28 alternative (iii) the Operating Subsidiaries were the express and intended third-party

1 beneficiaries of the loans that provided the funds for the \$144 Million Distribution
2 and therefore stood to benefit from the transfer of those loan funds to the Borrower
3 such that they have standing to bring this Claim for Relief even if they were not the
4 original transferor of the \$144 Million Distribution.

5 220. The Trustee is informed and believes, and on that basis alleges, the transfer
6 of the \$144 Million Distribution by Lehman/Suncal Master occurred during the
7 four year period immediately preceding the Petition Dates.

8 221. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact,
9 defraud the creditors of the Borrower and the Operating Subsidiaries by, inter alia,
10 (i) obtaining inflated appraised values of the Real Properties using budgets and
11 projections of future cash flow that Defendants knew or should have known were
12 overstated in light of their knowledge of the state of the housing market, (ii) using
13 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
14 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
15 the complete return of their equity, as well as profits, when no lots had yet been
16 sold, and when the Debtors would be left with insufficient funds to pay their debts
17 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
18 series of entities, in an attempt to shield themselves from liability to Borrower, the
19 Operating Subsidiaries, and the creditors of the Debtors. The Trustee is informed
20 and believes, and on that basis alleges, creditors existed at the time of the transfer of
21 the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-
22 Lakeside and SCC Ranch that remained unpaid as of the Petition Dates.

23 222. The Trustee is informed and believes, and on that basis alleges, the Operating
24 Subsidiaries received no value or less than reasonably equivalent value in exchange
25 for the transfer of the \$144 Million Distribution by Lehman/Suncal Master.

26 223. The Trustee is informed and believes, and on that basis alleges, at the time of
27 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the
28 Operating Subsidiaries were engaged or were about to engage in a business or a

1 transaction for which the remaining assets of the Debtors were unreasonably small
2 in relation to the business or transaction.

3 224. The Trustee is informed and believes, and on that basis alleges, at the time of
4 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the
5 Operating Subsidiaries intended to incur, or believed or reasonably should have
6 believed that they would incur, debts beyond their ability to pay as they became
7 due.

8 225. The Trustee is informed and believes, and on that basis alleges, that
9 Operating Subsidiaries did not receive reasonably equivalent value in return for the
10 transfer of the \$144 Million Distribution by Lehman/Suncal Master and that
11 Defendants did not receive the transfer of the \$144 Million Distribution in good
12 faith.

13 226. By reason of the foregoing, the transfer of the \$144 Million Distribution by
14 Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch is
15 avoidable, and therefore, the Trustee is entitled to recover the \$144 Million
16 Distribution from such Defendants and all subsequent transferees pursuant to 11
17 U.S.C. §§ 544(b) and 550 and California Civil Code §§ 3439.04(a)(2), and 3439.07.

18 227. In addition, in light of Defendants' fraudulent conveyance, the Trustee is
19 informed and believes, and on that basis alleges, that the Defendants were unjustly
20 enriched as a result of the transfer of the \$144 Million Distribution by
21 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
22 retained at the expense of the Operating Subsidiaries be recovered and returned to
23 the Operating Subsidiaries as restitution.

24 228. By reason of the foregoing and the wrongful acquisition or detention of the
25 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
26 imposition of a constructive trust as of the date of the transfer of the \$144 Million
27 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
28 as of the Petition Date.

SIXTH CLAIM FOR RELIEF

(To Recover Constructive Fraudulent Transfer of

Property under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.05)

(on behalf of the Operating Subsidiaries' creditors against all Defendants)

229. The Trustee re-alleges the foregoing paragraphs as though fully set forth herein. The Trustee brings this Claim for Relief to recover a constructively fraudulent transfer of property under 11 U.S.C. §§ 544(b) and California Civil Code §§ 3439.05, and 3439.07.

230. The Trustee brings this Claim for Relief on behalf of, *inter alia*, the following unsecured creditors of the Operating Subsidiaries who had a viable claim which arose on or before September 10, 2008, the time the bankruptcy petition was filed:

(a) As to Operating Subsidiary McSweeny: Unsecured creditor All American Asphalt had a claim for work performed at the McSweeny property in the amount of \$31,403.70, which claim arose on or before December 31, 2005, and which was outstanding as of the time of transfer on January 19, 2006. All American Asphalt also was an unsecured creditor of McSweeny as of September 10, 2008, the time the bankruptcy petition was filed;

(b) As to Operating Subsidiary Summerwind: Unsecured creditor Signs & Pinnick, Inc., had a claim for work performed at the Summerwind property in the amount of \$236,590.20, which claim arose on or before December 23, 2005, and which was outstanding as of the time of transfer on January 19, 2006. Signs & Pinnick, Inc., also was an unsecured creditor of Summerwind as of September 10, 2008, the time the bankruptcy petition was filed;

(c) As to Operating Subsidiary McAllister: Unsecured creditor Parker Printing, Inc., had a claim for work performed at the McAllister property in the amount of \$43.41, which claim arose on or before January 6, 2006, and which was outstanding as of the time of transfer on January 19, 2006. Parker Printing, Inc.,

1 also was an unsecured creditor of McAllister as of September 10, 2008, the time the
2 bankruptcy petition was filed.

3 231. The Trustee re-alleges paragraphs 152-173 as though fully set forth herein.
4 Based on these allegations, the Trustee is informed and believes that it has standing
5 to bring this Claim for Relief on behalf of the unsecured creditors of the Operating
6 Subsidiaries because: (i) the Borrower and Operating subsidiaries operated in such
7 a way, with such a unity of control and interest and in such a way that it would be
8 an injustice not to confer standing here, that the \$144 Million Distribution can be
9 treated as having been made by the Operating Subsidiaries as the initial transferor;
10 or in the alternative (ii) the Borrower was at all relevant times acting as the
11 Operating Subsidiaries' agent and the Operating Subsidiaries had control over the
12 Borrower and the direction of the loan proceeds that resulted in the transfer of the
13 \$144 Million Distribution such that the \$144 Million Distribution can be treated as
14 having been made by the Operating Subsidiaries as the initial transferor; or in the
15 alternative (iii) the Operating Subsidiaries were the express and intended third-party
16 beneficiaries of the loans that provided the funds for the \$144 Million Distribution
17 and therefore stood to benefit from the transfer of those loan funds to the Borrower
18 such that they have standing to bring this Claim for Relief even if they were not the
19 original transferor of the \$144 Million Distribution.

20 232. The Trustee is informed and believes, and on that basis alleges, that the
21 Operating Subsidiaries did not receive reasonably equivalent value in return for the
22 transfer of the \$144 Million Distribution by Lehman/Suncal Master and that
23 Defendants did not receive the transfer of the \$144 Million Distribution in good
24 faith.

25 233. As alleged in Paragraphs 29-96, Defendants conspired to, and did in fact,
26 defraud the creditors of the Borrower and the Operating Subsidiaries by, inter alia,
27 (i) obtaining inflated appraised values of the Real Properties using budgets and
28 projections of future cash flow that Defendants knew or should have known were

1 overstated in light of their knowledge of the state of the housing market, (ii) using
2 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
3 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
4 the complete return of their equity, as well as profits, when no lots had yet been
5 sold, and when the Debtors would be left with insufficient funds to pay their debts
6 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
7 series of entities, in an attempt to shield themselves from liability to Borrower, the
8 Operating Subsidiaries, and the creditors of the Debtors.

9 234. The Trustee is informed and believes, and on that basis alleges, at the time of
10 the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the
11 Operating Subsidiaries were either insolvent and/or were rendered insolvent as a
12 result of the transfer of the \$144 Million Distribution by Lehman/Suncal Master.

13 235. The Trustee is informed and believes, and on that basis alleges, creditors
14 existing at the time of or prior to the transfer of the \$144 Million Distribution by
15 Lehman/Suncal Master and that those creditors remained unpaid as of the Petition
16 Date.

17 236. By reason of the foregoing, the transfer of the \$144 Million Distribution by
18 Lehman/Suncal Master to Defendants is avoidable, and, therefore, the Trustee is
19 entitled to recover the \$144 Million Distribution from such Defendants and all
20 subsequent transferees pursuant to 11 U.S.C. §§ 544(b) and California Civil Code
21 §§ 3439.05, and 3439.07.

22 237. In addition, in light of Defendants' fraudulent conveyance, the Trustee is
23 informed and believes, and on that basis alleges, that the Defendants were unjustly
24 enriched as a result of the transfer of the \$144 Million Distribution by
25 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
26 retained at the expense of the Operating Subsidiaries be recovered and returned to
27 the Operating Subsidiaries as restitution.
28

238. By reason of the foregoing and the wrongful acquisition or detention of the \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the imposition of a constructive trust as of the date of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates as of the Petition Date.

SEVENTH CLAIM FOR RELIEF

(Unlawful Distribution under Applicable Law)

(against all Defendants)

239. The Trustee re-alleges the foregoing paragraphs as though fully set forth herein. The Trustee brings this Claim for Relief to recover unlawful payment of dividends under applicable law, including Delaware Limited Liability Company Act § 18-607.

240. The Trustee is informed and believes, and on that basis alleges, at the time of the transfer of the \$144 Million Distribution by Lehman/Suncal Master, the liabilities of each of the Debtors exceeded the fair value of each such Debtor.

241. The Trustee is informed and believes, and on that basis alleges, at the time of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch, such Defendants and each subsequent transferee of the proceeds of the \$144 Million Distribution knew or had substantial reason to know that, after the transfer of the \$144 Million Distribution, the liabilities of each of the Debtors exceeded the fair value of each such Debtor and that such transfer was therefore in violation of the Delaware Limited Liability Company Act, § 18-607(a).

242. By reason of the foregoing, Defendants are liable for the amount of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants LBREP-Lakeside and SCC Ranch. As members who received an unlawful distribution in violation of the Delaware Limited Liability Company Act, § 18-607(a), Lakeside and SCC Ranch are liable for the amount of the transfer pursuant

1 to Delaware Limited Liability Company Act, § 18-607(b). In light of the
2 allegations above and the fact that the Defendants acted with such a unity of interest
3 and ownership that separate personalities of the individuals and entities no longer
4 exists, the failure to disregard their corporate “structure” would result in fraud or
5 injustice and, as alter egos of each other, the Defendants are therefore all subject to
6 liability to the amount of the transfer pursuant to Delaware Limited Liability
7 Company Act, § 18-607(b).

8 243. In addition, in light of Defendants’ unlawful distribution, the Trustee is
9 informed and believes, and on that basis alleges, that the Defendants were unjustly
10 enriched as a result of the transfer of the \$144 Million Distribution by
11 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
12 retained at the expense of the Debtors be recovered and returned to the Debtors as
13 restitution.

14 244. By reason of the foregoing and the wrongful acquisition or detention of the
15 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
16 imposition of a constructive trust as of the date of the transfer of the \$144 Million
17 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
18 as of the Petition Date.

19 **EIGHTH CLAIM FOR RELIEF**

20 **(For Breach of Fiduciary Duty)**

21 **(against all Defendants)**

22 245. The Trustee re-alleges the foregoing paragraphs as though fully set forth
23 herein.

24 246. The Trustee is informed and believes, and on that basis alleges, that under
25 California Corporations Code and other applicable authority LBREP-Lakeside and
26 SCC Ranch, as the managing member and operating member respectively, of debtor
27 Lehman SunCal Master, which is the 100% member of the remaining Debtors, have
28

1 fiduciary duties to the Debtors and the creditors of the Debtors. These fiduciary
2 duties include, among other things, duties of care and loyalty.

3 247. LBREP-Lakeside and SCC Ranch, in turn, are managed by and through the
4 individual Defendants Bruce Elieff, Mark Magstadt, Melvin T. Andrews, Ronald
5 W. Lee, and Does 1 through 10. In addition, as alleged above and upon information
6 and belief, the other Defendants at all times acted as alter egos of LBREP-Lakeside
7 and SCC Ranch. As such, all Defendants similarly fiduciary duties to the Debtors
8 and the creditors of the Debtors, including but not limited to duties of care and
9 loyalty.

10 248. The Trustee is informed and believes, and on that basis alleges, that
11 Defendants breached their fiduciary duties to Debtors and their creditors, by, among
12 other things set out in more detail above, causing the Debtors to agree to and make
13 the transfer of the \$144 Million Distribution by Lehman/Suncal Master to
14 Defendants LBREP-Lakeside and SCC Ranch without receiving for the Debtors
15 any reasonably equivalent value for the transfer of the \$144 Million Distribution,
16 and agreeing to onerous and overbearing loan terms which left insufficient funds
17 for the development of the Real Properties, the conduct of the business of the
18 Debtors, or the repayment of and debt service upon the January 2006 Loans and the
19 Third Lien Loan, or repayment of the other obligations of the Debtors.

20 249. The Trustee is informed and believes, and on that basis alleges, these
21 breaches caused the insolvency of the Debtors and their inability to pay their debts
22 as they came due and the consequent financial damage to the Debtors in an amount
23 to be proven at trial of this matter. LBREP-Lakeside and SCC Ranch, as members
24 of debtor Lehman SunCal Master, are liable for these breaches of fiduciary duties,
25 and the other Defendants are subject to alter ego liability as a result of these
26 breaches of fiduciary duties.

27 250. By reason of the foregoing, the Trustee is entitled to damages in an amount
28 to be proven at trial. Because the conduct of Defendants was malicious, oppressive

1 and in open disregard for the rights of others, the Trustee is entitled to exemplary
2 damages in an amount to be proven at trial.

3 251. In addition, in light of Defendants' breach of their preexisting fiduciary
4 duties to Debtors and their creditors, the Trustee is informed and believes, and on
5 that basis alleges, that Defendants were unjustly enriched as a result of the transfer
6 of the \$144 Million Distribution by Lehman/Suncal Master. The Trustee requests
7 that all monies unjustly received and retained at the expense of the Debtors be
8 recovered and returned to the Debtors as restitution.

9 252. By reason of the foregoing and the wrongful acquisition or detention of the
10 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
11 imposition of a constructive trust as of the date of the transfer of the \$144 Million
12 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
13 as of the Petition Date.

14 **NINTH CLAIM FOR RELIEF**

15 **(Conversion)**

16 **(against all Defendants)**

17 253. The Trustee re-alleges the foregoing paragraphs as though fully set forth
18 herein.

19 254. The Trustee is informed and believes, and on that basis alleges, that as a
20 proximate result of the transfer of the \$144 Million Distribution by Lehman/Suncal
21 Master to Defendants LBREP-Lakeside and SCC Ranch, such Defendants and all
22 subsequent transferees of the proceeds of the \$144 Million Distribution
23 substantially interfered with and/or exerted wrongful dominion and control over the
24 property which Debtors had ownership of and right to possess. The \$144 Million
25 Distribution was a conversion of an identifiable and definite sum of money.

26 255. The \$144 Million Distribution was a wrongful act and/or a wrongful
27 disposition of the Debtors' property rights. As alleged herein, the \$144 Million
28

1 Distribution was a fraudulent conveyance and any purported authorization was, in
2 fact, obtained fraudulently.

3 256. Defendants' conversion damaged the Debtors in an amount equal to the value
4 of said property by wrongfully exerting dominion and control over property to the
5 exclusion of Debtors' ownership and possession rights.

6 257. In doing the acts alleged herein, Defendants, and each of them, acted
7 willfully and with oppression, fraud, and malice, entitling Plaintiff to punitive
8 damages.

9 258. In addition, in light of Defendants' conversion, the Trustee is informed and
10 believes, and on that basis alleges, that the Defendants were unjustly enriched as a
11 result of the transfer of the \$144 Million Distribution by Lehman/Suncal Master.
12 The Trustee requests that all monies unjustly received and retained at the expense
13 of the Debtors be recovered and returned to the Debtors as restitution.

14 259. By reason of the foregoing and the wrongful acquisition or detention of the
15 \$144 Million Distribution, the Trustee is, as a matter of justice, entitled to the
16 imposition of a constructive trust as of the date of the transfer of the \$144 Million
17 Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates
18 as of the Petition Date.

19 **TENTH CLAIM FOR RELIEF**

20 **(Unjust Enrichment)**

21 **(against all Defendants)**

22 260. The Trustee re-alleges the foregoing paragraphs as though fully set forth
23 herein.

24 261. The transfer and conveyance of the \$144 Million Distribution from
25 Lehman/Suncal Master (directly or indirectly) to defendants unjustly enriched such
26 Defendants and all subsequent transferees of the proceeds of the \$144 Million
27 Distribution. Specifically, Defendants and subsequent transferees received a
28 benefit, the use and enjoyment of all or some portion of the \$144 Million

1 Distribution, and unjustly retained that benefit at the expense of the Debtors' lawful
2 right to possess and use that property.

3 262. The Trustee requests that all monies unjustly received and retained at the
4 expense of the Debtors be recovered and returned to the Debtors as restitution and,
5 until such recovery, be held in a constructive trust for the benefit of Debtors.

6 **ELEVENTH CLAIM FOR RELIEF**

7 **(Accounting)**

8 **(Alleged Against All Defendants)**

9 263. The Trustee re-alleges the foregoing paragraphs as though fully set forth
10 herein.

11 264. The Trustee is informed and believes, and on that basis alleges, that a
12 relationship exists as between Defendants and Debtors such that Debtors are
13 entitled to an accounting. As alleged and discussed above, Defendants owed a
14 fiduciary duty to Debtors and/or the creditors of Debtors, and these fiduciary duties
15 in and of themselves entitle the Trustee to an accounting.

16 265. Further, the Trustee is informed and believes, and on that basis alleges, that
17 each of the Defendants received, either directly or indirectly, portions of the \$144
18 Million Distribution, benefits, profits, distributions, compensation, and other
19 payments of money from the Debtors to which Defendants are not justly entitled.

20 266. In addition, the Trustee seeks a constructive trust as one of its remedies to the
21 allegations and claims for relief herein, and if the \$144 Million Distribution is the
22 corpus of that constructive trust, the Trustee is entitled to an accounting of
23 Defendants, as involuntary trustees of that money, to trace the funds and determine
24 how the funds have been spent, what they have been invested in and what the
25 Trustee is entitled to from each of the Defendants.

26 267. The Trustee does not seek a sum certain, as the Trustee is entitled to *at least*
27 \$144 million, but may be entitled to additional sums to the extent Defendants
28 invested their ill-gained money or otherwise received profits from that money.

1 268. The Trustee is entitled to and hereby demands an accounting from each
2 Defendant of all such benefits received from Debtors to determine the sums certain
3 which each of the Defendants are obliged to surrender, and hereby demands
4 repayment of the same.

5 **TWELFTH CLAIM FOR RELIEF**

6 **(Vicarious Liability – Aiding and Abetting)**

7 **(Alleged Against All Defendants)**

8 269. The Trustee re-alleges the foregoing paragraphs as though fully set forth
9 herein.

10 270. The Trustee is informed and believes, and on that basis alleges, that each
11 Defendant (i) knew of the conduct of each of the other Defendants with regard to
12 the structuring of the January 2006 and February 2007 Loans and \$144 Million
13 Distribution, the decision to enter into those Loans and Lien transactions, and the
14 \$144 Million Distribution; (ii) knew that the other defendants' conduct was a
15 breach of the other Defendants' duty; and (iii) gave substantial assistance or
16 encouragement to the other Defendants to so act.

17 271. In the alternative, the Trustee is informed and believes, and on that basis
18 alleges, that each Defendant: (i) gave substantial assistance to the other Defendants
19 in accomplishing a tortious result; and (ii) each Defendant's conduct, considered
20 separately, constitutes a breach of duty.

21 272. The principals representing each corporate Defendant, along with each of the
22 individual Defendants, participated in the structuring of the January 2006 and
23 February 2007 Loans and \$144 Million Distribution, the decision to enter into those
24 Loans and Lien transactions, and the \$144 Million Distribution. Specifically,

25 (a) The LBREP Defendants: The LBREP Defendants were represented in
26 the underlying transactions by common individuals, including Karen Blakely,
27 Frank Cappello, Tom Chilton, Rodolpho Amboss, Francis Gilhool, and others, who,
28 upon information and belief, all participated in the underlying transactions,

1 provided input into the structure of the January 2006 and February 2007 Loans and
2 \$144 Million Distribution, authorized these transactions on behalf of the LBREP
3 Defendants and the Debtors, distributed the funds to LBREP, Lakeside Capital, and
4 SunCal from the \$144 Million Distribution, were fully aware of the corporate
5 structure of the Borrower and Operating Subsidiaries, as well as the fiduciary duties
6 owed by each of the members of those entities, and/or participated in the
7 development of the Real Estate Projects. These individuals corresponded with the
8 Lakeside Defendants and the SunCal Defendants about these issues and knew of
9 their conduct, knew that their conduct was a breach of the fiduciary duties owed to
10 Borrower and the Operating Subsidiaries, and encouraged and assisted these
11 breaches for their own benefit and the benefit of LBREP and the LBREP
12 Defendants;

13 (b) The Lakeside Defendants: Melvin Andrews, Ronald Lee, and Marsha
14 Jennings, other representatives or agents of the Lakeside Defendants, and Darren
15 Fancher, upon information and belief, all participated in the underlying
16 transactions, provided input into the structure of the January 2006 and February
17 2007 Loans and \$144 Million Distribution, authorized these transactions on behalf
18 of Lakeside Capital and the Debtors, distributed the funds to the LBREP
19 Defendants, the Lakeside Capital Defendants, and the SunCal Defendants from the
20 \$144 Million Distribution, were fully aware of the corporate structure of the
21 Borrower and Operating Subsidiaries, as well as the fiduciary duties owed by each
22 of the members of those entities, and/or participated in the development of the Real
23 Estate Projects. The Lakeside Defendants corresponded with representatives from
24 the LBREP Defendants and the SunCal Defendants about these issues and knew of
25 their conduct, knew that their conduct was a breach of the fiduciary duties owed to
26 Borrower and the Operating Subsidiaries, and encouraged and assisted these
27 breaches for their own benefit;
28

(c) The SunCal Defendants: The SunCal Defendants were represented in the underlying transactions by common individuals, including Bruce Elieff, Mark Magstadt, Ed Nolan, Stephan Elieff, Bruce Cook, Saif Qureshi, and others, who, upon information and belief, all participated in the underlying transactions, provided input into the structure of the January 2006 and February 2007 Loans and \$144 Million Distribution, authorized these transactions on behalf of the SunCal Defendants and the Debtors, distributed the funds to the LBREP Defendants, the Lakeside Defendants, and the SunCal Defendants from the \$144 Million Distribution, were fully aware of the corporate structure of the Borrower and Operating Subsidiaries, as well as the fiduciary duties owed by each of the members of those entities, and/or participated in the development of the Real Estate Projects. These individuals corresponded with the LBREP Defendants and the Lakeside Defendants about these issues and knew of their conduct, knew that their conduct was a breach of the fiduciary duties owed to Borrower and the Operating Subsidiaries, and encouraged and assisted these breaches for their own benefit.

273. The Trustee is informed and believes, and on that basis alleges, that each of the Defendants aided and abetted in or are otherwise vicariously liable for the wrongful actions alleged herein, including fraudulent transfer, breach of their own and each others' fiduciary duties owed to Debtors, conversion and unjust enrichment.

274. The Trustee is informed and believes, and on that basis alleges, that the object of the aiding and abetting and other misconduct alleged herein was to benefit themselves, both directly and indirectly, by misappropriating the Debtor's funds for themselves or their affiliates.

275. The Trustee is informed and believes, and on that basis alleges, that as a proximate result of the defendants' wrongdoing, the Defendants damaged the Debtor in an amount that is currently uncertain at least in the amount of \$144 million, to be determined at trial.

1 276. In doing the acts alleged herein, Defendants, and each of them, acted
2 willfully and with oppression, fraud, and malice, entitling Plaintiff to punitive
3 damages.

4 277. In addition, in light of Defendants' aiding and abetting, the Trustee is
5 informed and believes, and on that basis alleges, that the Defendants were unjustly
6 enriched as a result of the transfer of the \$144 Million Distribution by
7 Lehman/Suncal Master. The Trustee requests that all monies unjustly received and
8 retained at the expense of the Debtors be recovered and returned to the Debtors as
9 restitution.

10 278. By reason of the foregoing and the wrongful acquisition or detention of the
11 \$144 Million Distribution and the Defendants' aiding and abetting thereto, the
12 Trustee is, as a matter of justice, entitled to the imposition of a constructive trust as
13 of the date of the transfer of the \$144 Million Distribution by Lehman/Suncal
14 Master to Defendants for the benefit of the Estates as of the Petition Date.

15 **THIRTEENTH CLAIM FOR RELIEF**

16 **(Vicarious Liability – Civil Conspiracy)**

17 (Alleged Against All Defendants)

18 279. The Trustee re-alleges the foregoing paragraphs as though fully set forth
19 herein.

20 280. The Trustee is informed and believes, and on that basis alleges, that each of
21 the Defendants conspired with each other or are otherwise vicariously liable for the
22 wrongful actions alleged herein, including fraudulent transfer, breach of their own
23 and each others' fiduciary duties owed to Debtors, conversion and unjust
24 enrichment.

25 281. The Trustee is informed and believes, and on that basis alleges, that LBREP-
26 Lakeside and SCC Ranch owed fiduciary duties to Borrower as the two members of
27 Borrower, that each corporate Defendant owed a duty to Debtors as the alter ego of
28

1 LBREP-Lakeside and/or SCC Ranch, and/or that each Defendant owed independent
2 duties to Debtors.

3 282. The Trustee is informed and believes, and on that basis alleges, that the
4 object of the conspiracy and other misconduct alleged herein was to benefit
5 themselves, both directly and indirectly, by misappropriating the Debtor's funds for
6 themselves or their affiliates.

7 283. Specifically, as alleged in Paragraphs 29-96, Defendants conspired to defraud
8 the creditors of the Borrower and the Operating Subsidiaries by, inter alia, (i)
9 obtaining inflated appraised values of the Real Properties using budgets and
10 projections of future cash flow that Defendants knew or should have known were
11 overstated in light of their knowledge of the state of the housing market, (ii) using
12 these inflated appraised values to obtain the January 2006 Loans, (iii) structuring
13 the January 2006 Loans and \$144 Million Distribution to provide Defendants with
14 the complete return of their equity, as well as profits, when no lots had yet been
15 sold, and when the Debtors would be left with insufficient funds to pay their debts
16 as they became due, (iv) issuing the \$144 Million Dividend, and (v) establishing a
17 series of entities, in an attempt to shield themselves from liability to Borrower, the
18 Operating Subsidiaries, and the creditors of the Debtors.

19 284. Further, as alleged in Paragraphs 130-149, (i) the LBREP Defendants were
20 alter egos of one another, including LBREP-Lakeside; (ii) Lakeside Capital was the
21 alter ego of LBREP-Lakeside; and (iii) the SunCal Corporate Defendants were the
22 alter egos of one another.

23 285. The Trustee is informed and believes, and on that basis alleges, that as a
24 proximate result of the defendants' wrongdoing, the Defendants damaged the
25 Debtor in an amount that is currently uncertain at least in the amount of \$144
26 million, to be determined at trial.

286. In doing the acts alleged herein, Defendants, and each of them, acted willfully and with oppression, fraud, and malice, entitling Plaintiff to punitive damages.

287. In addition, in light of Defendants' civil conspiracy, the Trustee is informed and believes, and on that basis alleges, that the Defendants were unjustly enriched as a result of the transfer of the \$144 Million Distribution by Lehman/Suncal Master. The Trustee requests that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution.

288. By reason of the foregoing and the wrongful acquisition or detention of the \$144 Million Distribution and the Defendants' civil conspiracy thereto, the Trustee is, as a matter of justice, entitled to the imposition of a constructive trust as of the date of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants for the benefit of the Estates as of the Petition Date.

PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully request that the Court enter judgment and grant the following relief:

On The First, Second, Third, Fourth, Fifth and Sixth Claims for Relief

(Fraudulent Transfer)

1. Avoidance of the transfer of the \$144 Million Distribution by Lehman/Suncal Master to Defendants and judgment against Defendants for the amount of the \$144 Million Distribution.

2. A determination that the Trustee may pursue other immediate or mediate transferees not named in this action after obtaining the judgment prayed for herein pursuant to Bankruptcy Code § 550.

3. Judgment against Defendants preserving for the benefit of the chapter 11 estates of the Debtors the avoidance of the transfer of the \$144 Million Distribution pursuant to 11 U.S.C. § 551.

4. Judgment against Defendants that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution and, until such recovery, be held in a constructive trust for the benefit of Debtors.

5. Judgment against Defendants that any proceeds of the \$144 Million Distribution be subjected to a constructive trust for the benefit of the Trustee.

6. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

On The Seventh Claim for Relief (Unlawful Distribution)

7. Judgment against Defendants for the amount of the \$144 Million Distribution.

8. Judgment against Defendants that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution and, until such recovery, be held in a constructive trust for the benefit of Debtors.

9. Judgment against Defendants that any proceeds of the \$144 Million Distribution be subjected to a constructive trust for the benefit of the Trustee.

10. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

On The Eighth Claim for Relief (Breach of Fiduciary Duty)

11. Judgment against Defendants for the amount of the \$144 Million Distribution plus all other consequential damages caused by the breaches of fiduciary duty of Defendants.

12. Judgment against Defendants that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution and, until such recovery, be held in a constructive trust for the benefit of Debtors.

13. Judgment against Defendants that any proceeds of the \$144 Million Distribution be subjected to a constructive trust for the benefit of the Trustee.

14. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

15. An award of punitive damages against Defendants.

On The Ninth and Tenth Claims for Relief (Conversion, Unjust Enrichment)

16. Judgment against Defendants for the amount of the \$144 Million Distribution.

17. Judgment against Defendants that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution and, until such recovery, be held in a constructive trust for the benefit of Debtors.

18. Judgment against Defendants that any proceeds of the \$144 Million Distribution be subjected to a constructive trust for the benefit of the Trustee.

19. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

20. An award of punitive damages against Defendants.

On The Eleventh Claim for Relief (Accounting)

21. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

On The Twelfth and Thirteenth Claims for Relief (Vicarious Liability – Aiding and Abetting and Vicarious Liability – Civil Conspiracy)

23. Judgment against Defendants for the amount of the \$144 Million Distribution plus all other consequential damages caused by the breaches of fiduciary duty and other wrongful conduct of Defendants.

24. Judgment against Defendants that all monies unjustly received and retained at the expense of the Debtors be recovered and returned to the Debtors as restitution and, until such recovery, be held in a constructive trust for the benefit of Debtors.

25. Judgment against Defendants that any proceeds of the \$144 Million Distribution be subjected to a constructive trust for the benefit of the Trustee.

26. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

27. An award of punitive damages against Defendants.

On The Fourteenth Claim for Relief (Accounting)

28. Judgment against Defendants for an accounting of all benefits received from Debtors and judgment for all such amounts found to be improperly taken by Defendants.

On All Claims for Relief

29. An award of all pre-judgment interest, and costs and attorneys fees incurred in connection with this action and any and all such other relief as may be deemed appropriate by the Court.

Dated: September 23, 2011 ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Valerie M. Goo

VALERIE M. GOO

Special Counsel for Plaintiff
ALFRED H. SIEGEL,
LIQUIDATING TRUSTEE

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all of the above claims for relief.

Dated: September 23, 2011 ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Valerie M. Goo

VALERIE M. GOO

Special Counsel for Plaintiff
ALFRED H. SIEGEL,
LIQUIDATING TRUSTEE